FOR ARGUMENT

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. A-421

PEGGY J. CONNOR, *et al.*,
Appellants,
v.
CLIFF FINCH, Governor of Mississippi, *et al.*

On Appeal from the United States District Court for the Southern District of Mississippi

APPLICATION TO VACATE STAY ENTERED BY DISTRICT COURT PENDING APPEAL AND FOR AN INJUNCTION PENDING APPEAL, OR ALTERNATIVELY SUPPLEMENTAL PETITION FOR A WRIT OF MANDAMUS.

FRANK R. PARKER
Lawyers' Committee for
Civil Rights Under Law
P.O. Box 1971
Jackson, Mississippi 39205
(601) 948-5400

ROBERT A. MURPHY
ELIZABETH RINDSKOPF
WILLIAM E. CALDWELL
Lawyers' Committee for
Civil Rights Under Law
Suite 520 Woodward Building
733 Fifteenth Street, N.W.
Washington, D.C. 20005
(202) 628-6700

Attorneys for Appellants

WILSON - EPES PRINTING CO., INC. - RE 7-6002 - WASHINGTON D. C. 20001

TABLE OF CONTENTS

		Page
SUMMARY		2
STATEMENT AND PROCEEDINGS BELOW		5
ARGUMENT		11
CONCLUSION		34
APPENDIX		
A	Final Judgment, Filed November 18, 1976 (Omitted in printing, See Appendix D of Jurisdictional Statement of Government)	
B	Notice of Appeal, Filed November 18, 1976 (Omitted in printing, See Appendix G, Jurisdictional Statement of Government)	
C	Opinion, Filed November 11, 1976 (Omitted in printing, See Appendix C, Jurisdictional Statement of Government)	
D	Opinion, Filed September 8, 1976 (Omitted in printing, See Appendix B, Jurisdictional Statement of Government)	
E	Opinion, Filed August 24, 1976 (Omitted in printing, See Appendix A, Jurisdictional Statement of Government)	
F	Private Plaintiffs' Motion for Special House Elections, Filed September 16, 1976	1a
G	Justice Department's Motion for Special House Elections, Filed September 25, 1976	16a
H	Affidavit of Frank R. Parker	21a

TABLE OF AUTHORITIES

Cases: Page

Alexander v. *Holmes County Bd. of Educ.*, 396 U.S. 19 (1969) 32
Chapman v. *Meier*, 420 U.S. 1 (1975) 7, 13, 32
Connor v. *Coleman*, 256 F. Supp. 962 (S.D. Miss. 1966) 6
Connor v. *Coleman*, 265 F. Supp. 492 (S.D. Miss. 1967) 6
Connor v. *Coleman*, 330 F. Supp. 506 (S.D. Miss. 1971), *on interim relief*, 402 U.S. 690 (1971), 402 U.S. 928 (1971), *vacated and remanded on the merits*, 404 U.S. 549 (1972) 6-7
Connor v. *Coleman*, 396 F. Supp. 1308 (S.D. Miss. 1975), *rev'd*, 421 U.S. 656 (1975) 7
Connor v. *Coleman*, —— U.S. ——, 48 L. Ed. 2d 295 (No. 74-1184, decided May 19, 1966) 2-3, 4, 6, 7, 8, 9-10, 11, 13, 16, 17, 18, 19, 20, 21, 22, 24, 26, 27, 28, 31, 32, 34
Connor v. *Johnson*, 404 U.S. 549 (1972) 7, 16
Connor v. *Waller*, 421 U.S. 656 (1975) 3, 7, 12, 15, 16
Connor v. *Williams*, 404 U.S. 549 (1972) 3, 13, 32
Graves v. *Barnes*, 343 F. Supp. 704 (W.D. Tex. 1972) 14
Hadnott v. *Amos*, 394 U.S. 358 (1969) 15
Hall v. *Issaquena County Board of Supervisors*, 453 F.2d 404 (5th Cir. 1971) 15
Hamer v. *Campbell*, 358 F.2d 214 (5th Cir. 1966), *cert. denied*, 385 U.S. 851 (1966) 15
Howard v. *Adams County Board of Supervisors*, 453 F.2d 455 (5th Cir. 1972), *cert. denied*, 407 U.S. 925 (1972) 15, 28
Keller v. *Gilliam*, 454 F.2d 55 (5th Cir. 1971) 15
Kelly v. *Metropolitan County Board of Education of Nashville*, 436 F.2d 856 (6th Cir. 1970) 32
Mahan v. *Howell*, 410 U.S. 315 (1973) 7, 13
Moore v. *Leflore County Board of Election Comm'rs.*, 351 F. Supp. 848 (N.D. Miss. 1971) (three-judge court) 23

TABLE OF AUTHORITIES—Continued

Page

Moore v. *Leflore County Board of Election Comm'rs.*, 361 F. Supp. 603 (N.D. Miss. 1972), *aff'd.* 502 F.2d 621 (5th Cir. 1974) 23
Taylor v. *Monroe County Board of Supervisors*, 421 F.2d 1038 (5th Cir. 1970) 15
Toney v. *White*, 488 F.2d 310 (5th Cir. 1973) (*en banc*) 15
Town of Sorrento v. *Reine*, —— U.S. —— (No. 75-93, decided Mar. 26, 1976) 15
United States v. *Board of Supervisors of Warren County, Mississippi*, —— U.S. —— (No. 76-489) 27
Watson v. *City of Memphis*, 373 U.S. 526 (1963) 32
White v. *Regester*, 412 U.S. 755 (1973) 12, 14
Zimmer v. *McKeithen*, 485 F.2d 1297 (5th Cir. 1973) (*en banc*), *aff'd on other grounds sub nom East Carroll Parish School Board* v. *Marshall*, —— U.S. ——, 47 L. Ed. 2d 296 (1976) 14

Statutes:

Voting Rights Act of 1965
§ 5 ..... *passim*
Miss. Code Ann.
§ 5-1-7 (1972) 6
§ 23-5-201 (1972) 33
§ 23-5-203 (1972) 34

Other Authorities:

E. Bryant and S. El-Attar, POPULATION OF MISSISSIPPI LEGISLATIVE AND CONGRESSIONAL DISTRICTS, 1970, AND PROJECTIONS TO 1975 (July 1973) 16
H. Ladner, Secretary of State, MISSISSIPPI OFFICIAL AND STATISTICAL REGISTER, 1972-1976 20
U.S. Bureau of the Census, 1970 CENSUS OF POPULATION ..... *passim*

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APPLICATION TO VACATE STAY ENTERED BY DISTRICT COURT PENDING APPEAL AND FOR AN INJUNCTION PENDING APPEAL, OR ALTERNATIVELY SUPPLEMENTAL PETITION FOR A WRIT OF MANDAMUS.

TO THE HONORABLE LEWIS F. POWELL, JR., Associate Justice of the Supreme Court of the United States and Circuit Justice for the Fifth Circuit:

Appellants, plaintiffs below, by their attorneys respectfully move the Court pursuant to the All Writs Act, 28 U.S.C. § 1651, and Rules 18 and 51, U.S. Sup. Ct. Rules, for an order:

1. Vacating the stay order entered in paragraph 7 of the Final Judgment of the District Court entered November 18, 1976, staying special legislative elections in new House Districts 79 and 97 pending appeal;

2. Enjoining defendants-appellees to order and direct special elections for the Mississippi House of Representatives in new House districts 3, 8, 10, 16, 17, 22, 24, 25, 26, 27, 32, 33, 34, 37, 38, 44, 47, 52, 56, 79, 81, 88, 89, and 97 as established by the Final Judgment of the District Court entered November 18, 1976, to be held at the earliest practicable date, but not less than 30 days after the date of this Court's order; and

3. Enjoining defendants-appellees, pending the holding of these special legislative elections, temporarily to postpone the convening of the 1977 regular session of the Mississippi Legislature until these special elections are held, together with any necessary run-off elections, and the winning candidates are duly certified; or alternatively

4. Expediting this appeal on the merits.

As grounds for their application, plaintiffs-appellants would show to the Court as follows:

SUMMARY

This action was last before this Court this spring on plaintiffs' petition for a writ of mandamus to vacate the District Court's January 29, 1976, stay order, *Connor* v. *Coleman*, No. 74-1184 (decided May 19, 1976), the fourth proceeding in this Court in five years. Plaintiffs' motion for leave to file the petition was granted, and although the Court continued consideration of the petition, the Court instructed the District Court

> "to 'bring this case to trial forthwith . . .' and schedule a hearing to be held within 30 days on all proposed permanent reapportionment plans to

> the end of entering a final judgment embodying a permanent plan reapportioning the Mississippi Legislature in accordance with law to be applicable to the election of legislators in the 1979 quadrennial elections, and also ordering any necessary special elections to be held to coincide with the November 1976 Presidential and congressional elections, or in any event at the earliest practicable date thereafter." *Connor* v. *Coleman*, *supra* (slip op., p. 5).

The required hearing was held on June 15, 1975, and all prior hearings, exhibits, and pleadings were made part of the record. Yet, the new plan (the 1976 Plan), devised entirely by the District Court itself, was not promulgated until August 24 (Senate Plan) and September 8 (House plan). Both plans were finalized November 12 (ruling on objections). Final judgment was entered on November 18. The 1976 Plan provides a permanent legislative reapportionment plan for the first time, based on single-member districts statewide for both House and Senate.

All prior court-ordered reapportionment plans in this case, which, by employing multi-member districts and at-large voting, consistently have failed to conform to this Court's rulings in *Connor* v. *Williams*, 404 U.S. 549 (1972), and *Connor* v. *Waller*, 421 U.S. 656 (1975), that single-member districts are to be preferred. The 1971 and 1975 legislative elections had proceeded on the basis of court-ordered plans employing multi-member districts and countywide voting which denied black voters the opportunity of effective participation in the political process. The temporary plan ordered into effect by the District Court for the 1975 legislative elections also was based on the 1975 plan enacted by the Mississippi Legislature to which the Attorney General had objected under Section 5 of the Voting Rights Act of 1965 as racially discriminatory.

The 1976 Plan is based on single-member districts state-wide for the first time; it thus conforms to this Court's requirements for court-ordered plans. Yet, the District Court has nonetheless failed to effectuate the relief possible under the 1976 Plan by refusing to grant the special elections needed to correct the discrimination of black voting strength perpetuated in the 1971 and 1975 legislative elections, conducted under discriminatory reapportionment plans. The District Court's Final Judgment of November 18, 1976, determined that special elections were necessary in only two of the 122 new single-member House Districts. Yet, special elections are required in another 20 House Districts to overcome the discrimination of past court-ordered plans.*

Contrary to the specific directions of this Court in *Connor* v. *Coleman*, *supra*, that any special elections necessary be ordered "to coincide with the 1976 November Presidential and congressional elections, or in any event at the earliest practicable date thereafter," the lower court has refused to order any special elections at all prior to the convening of the 1977 regular session of the Mississippi Legislature, instead preferring to stay special elections it felt necessary until the outcome of the instant appeal.

The result is to perpetuate an improperly constituted state legislature and to deny black voters who resided in discriminatory multi-member and countywide districts under the 1971 and 1975 reapportionment plans, the opportunity to participate effectively in the electoral processes for another four years, until 1979. Eleven years of litigation have not yet resulted in a constitutionally apportioned Mississippi Legislature. The voters of Mississippi have suffered for ten years under court-ordered legislative reapportionment plans which failed to meet

* Further special elections are sought in two additional House Districts to avoid increasing the size of the House.

this Court's requirements for court-ordered plans and which in the face of an extensive past history of official discrimination affecting the right to vote in Mississippi, excluded black citizens from the opportunity to elect legislators of their choice. The permanent plan now ordered into effect by the District Court meets these requirements. The new plan provides 22 new majority black single-member districts which replace the old discriminatory multi-member districts of prior plans. Plaintiffs have accepted these new districts as adequate relief from the prior discriminatory districts. But now that this past dilution of black voting strength has been alleviated, special elections in these districts should be ordered without further delay. Justice has been denied by delay for the past ten years of litigation in this case, and the injustice and inequities of past discrimination will be perpetuated unless this Court acts now to order the special elections requested. Plaintiffs call upon this Court to intervene once again to secure plaintiffs' constitutional and legal rights, to grant plaintiffs full and effective relief to cure the discrimination of the District Court's prior multi-member district plans, and to effectuate its own order to the District Court to order "any necessary special elections" and to schedule those elections to be held "at the earliest practicable date."

STATEMENT AND PROCEEDINGS BELOW

1. On November 18, 1976, the District Court entered its Final Judgment ordering single-member legislative districts statewide for the Mississippi House of Representatives and Senate for the 1979 legislative elections. A copy of the Final Judgment is attached hereto as Appendix A. This is an appeal from paragraphs 7 and 8 of the Final Judgment denying interim special legislative elections for all but two House districts established by the 1979 permanent plan (new House dis-

tricts 79 and 97) and deferring setting a date for the special elections in those two House districts until the time for taking an appeal had run, or if an appeal is taken, until this Court has decided the appeal on the merits (Appendix A attached, p. 20). The 1977 regular session of the Mississippi Legislature is scheduled to convene on January 4, 1977. Miss. Code Ann. § 5-1-7 (1972). Plaintiffs' notice of appeal was filed on November 18, 1976, and is attached as Appendix B.

2. This action was filed October 19, 1965, by eight black registered voters, who represent the class of all black citizens and registered voters of Mississippi, and the Mississippi Freedom Democratic Party seeking relief from racially discriminatory and malapportioned state legislative districts. Defendants are the Governor of Mississippi, the members of the Mississippi State Board of Elections, and the presiding officers of the Mississippi Senate and House of Representatives. On June 11, 1976, the District Court granted the motion of the United States to intervene as plaintiff-intervenor. State legislative reapportionment plans enacted by the Mississippi Legislature in 1962, 1966, and 1971 were struck down by the District Court for malapportionment, and the 1975 plan enacted by the Mississippi Legislature was objected to by the Attorney General under Section 5 of the Voting Rights Act of 1965, see *Connor* v. *Coleman*, No. 75-1184, decided May 19, 1976 (slip op. at 1-3). Mississippi legislative elections in 1967, 1971, and 1975 all were held pursuant to apportionment plans ordered by the District Court, and each court-ordered plan employed numerous multi-member districts and excessive deviations from population equality. See Petition for Writ of Mandamus, *Connor* v. *Coleman*, *supra*, pp. 5-12.[1] On May

[1] Prior decisions in this case are reported at 256 F. Supp. 962 (S.D. Miss. 1966) (1962 legislative plan unconstitutional); 265 F. Supp. 492 (S.D. Miss. 1967) (1967 court-ordered plan); 330 F. Supp. 506 (S.D. Miss. 1971) (1971 court-ordered plan), on interim relief, 402 U.S. 690 (1971), 402 U.S. 928 (1971), vacated and remanded on the merits, 404 U.S. 549 (1972); 396 F. Supp. 1308 (S.D. Miss. 1975) (approving 1975 legislative plan), rev'd, 421 U.S. 656 (1975); *Connor* v. *Coleman*, —— U.S. ——, 48 L.Ed.2d 295 (No. 75-1184, decided May 19, 1976) (granting motion for leave to file petition for mandamus).

19, 1975, holding that the District Court erred in approving the 1975 legislatively enacted plan without Section 5 preclearance, *Connor* v. *Waller*, 421 U.S. 656 (1975), this Court directed:

> "This reversal is, however, without prejudice to the authority of the District Court, if it should become appropriate, to entertain a proceeding to require the conduct of the 1975 elections pursuant to a court-ordered reapportionment plan that complies with this Court's decisions in *Mahan* v. *Howell*, 410 U.S. 315 (1973), *Connor* v. *Johnson*, 404 U.S. 549 (1972) and *Chapman* v. *Meier*, 420 U.S. 1 (1975)."

3. On remand and after the Attorney General objected under Section 5 of the Voting Rights Act to the 1975 reapportionment plan of the Mississippi Legislature, the District Court on July 11, 1975, ordered into effect "certain temporary districts for the election of Senators and Representatives in the Mississippi Legislature for the Year 1975 only," Pet., *Connor* v. *Coleman*, *supra*, App. F, p. 26a. The 1975 temporary court-ordered plan was identical to the 1971 court-ordered plan and to the plan to which the Attorney General objected under Section 5, except that new single-member districts were established for Hinds, Madison, Marshall, Jackson, Perry, Greene, George, Stone, Pearl River and Harrison Counties in the House, and Hinds County in the Senate, Pt., *Connor* v. *Coleman*, *supra*, App. F. Despite these alterations, the 1975 temporary plan failed to meet the requirements of this Court's mandate in *Connor* v. *Waller*. For the House, 51 of the 85 districts established by the 1975 court plan were multi-member districts (including floterial districts), electing 72.95 percent of the House mem-

bership (89 out of 122 Representatives). For the Senate, 15 of the 39 districts were multi-member districts, electing 53.85 percent of the Senate membership (28 out of 52 Senators). The District Court itself recognized that many of these districts combined majority black counties with majority white counties in districtwide white majorities, *id.*, pp. 33a-45a, and countywide voting submerged black population concentrations sufficiently large for independent representation. *Id.*, App. E, pp. 8a-15a. Further, the 1975 court plan districts were excessively malapportioned, with total deviations of 62.963 percent in the House and 20.292 percent in the Senate for floterial districts, and 19.729 percent in the House and 18.903 percent in the Senate for nonfloterial districts. *Id.*, App. E, pp. 15a-17a.

4. In justification for its failure to comply with this Court's mandate, the District Court stated that time was too short to formulate a permanent plan prior to the August, 1975, primaries and November, 1975, general election. Order of July 25, 1975, Pet., *Connor* v. *Coleman*, *supra*, App. G, p. 85a. However, in three separate orders the District Court held that no irreparable injury would result because when the permanent plan was formulated, special elections would be ordered. Order of July 25, 1975, *supra*; Order of July 8, 1975, Pet., *Connor* v. *Coleman*, *supra*, App. G, p. 86a; Order of August 1, 1975, Pet., *Connor* v. *Coleman*, *supra*, App. C, pp. 4a-5a. In its Order of July 8, 1975, the District Court said:

> "We have determined that no irreparable injury will occur by allowing the 1975 legislative elections to proceed under a temporary plan on the dates provided by law. If the permanent plan, later to be adopted manifests that the temporary plan has caused such an injury the same shall be corrected by special elections as provided by Mississippi law."

> Order of July 8, 1975, p. 15 (quoted in Appendix D attached, p. 32).

In its Order of August 1, 1975, the District Court indicated its "firm determination" to have a permanent plan approved by February 1, 1976, and said:

> "As to all instances in which a special election may be required, the Court expects to direct that the same shall be held in conjunction with the 1976 Presidential elections so far as to save the expense of special elections as far as possible." Pet., *Connor* v. *Coleman*, *supra*, App. C, p. 5a.

5. After continually reiterating its assurances that a permanent plan would be approved by February 1, 1976, and special legislative elections ordered in conjunction with the 1976 presidential election, the District Court on January 29, 1976, entered an order staying all further proceedings in this case pending the outcome of three cases pending in this Court which were not relevant to the issues pending in the District Court. Pet., *Connor* v. *Coleman*, *supra*, App. A. Plaintiffs then filed a motion for leave to file and petition for writ of mandamus in this Court asking this Court to vacate the stay issued by the District Court and to order the District Court to proceed in its original schedule. On May 19, 1976, this Court granted the motion for leave to file, and continuing consideration on the petition itself, expressed the view that the District Court should proceed:

> "Rather, in our view the District Court should in the circumstances promptly carry out the assurance given in its order of January 29, 1976, to "bring this case to trial forthwith . . ." and schedule a hearing to be held within 30 days on all proposed permanent reapportionment plans to the end of entering a final judgment embodying a permanent plan reapportioning the Mississippi Legislature in accordance with law to be applicable to the election of legislators in the 1979 quadrennial elections, *and*

also ordering any necessary special elections to be held to coincide with the November 1976 Presidential and congressional elections, or in any event at the earliest practicable date. * * *"* *Connor* v. *Coleman, supra* (slip op. 4-5) (emphasis added).

6. The required hearing was held on June 15, 1976, and on August 24, 1976, and September 8, 1976, the District Court issued opinions promulgating permanent legislative reapportionment plans for the Senate and House. Copies of these opinions are attached as Appendices D and E. In these opinions the District Court directed the parties to file proposals for special legislative elections, and stated:

"Upon receipt of this information, the Court will rule thereon as quickly as reasonably possible. Should special elections be ordered in any district, the same will be held only after fully adequate notice and *in time for the person elected to take his seat when the Legislature is convened in regular session in January, 1977.*" (Opinion of Sept. 8, 1976, Appendix D attached, p. 33) (emphasis added).

Plaintiffs filed motions on September 8 and September 16 for special elections in the Senate, requesting special elections in 10 new Senate districts, and for special elections in the House, requesting special elections in 41 new House districts. A copy of the motion for House elections is attached as Appendix F. The Department of Justice filed similar proposals on September 11 and 26, requesting special elections in 14 new Senate districts and 29 new House districts. A copy of the Justice Department proposal for House elections is attached as Appendix G. Defendants proposed that no special election relief should be granted. Plaintiffs and plaintiff-intervenor also objected to the court's Senate plan and proposed alternative plans and objected to certain districts established in the court's House plan and proposed alternative House districts to those objected to. The District Court held informal conferences with the parties on October 1 and 7 to attempt to resolve the objections to its plans. On November 12 the District Court entered its final opinion declining to alter its Senate plan and changing 11 districts of its House plan. A copy is attached as Appendix C. The date for special elections in the two House districts designated for special elections was stayed pending expiration of the time for an appeal or pending final decision by this Court of an appeal. App. C attached, p. 14. Final Judgment in accordance with the November 12 opinion was entered on November 18, and is attached hereto as Appendix A.

ARGUMENT

7. The final judgment of the District Court requiring special elections in only two new House districts and staying the holding of these special elections pending the outcome of an appeal (a) on the extent of the relief ordered, flies in the face of the holding of the District Court itself that the inequities of the 1975 temporary plan will be corrected by special elections under the permanent plan (par. 4, supra), and (b) on timing, amounts to substantial noncompliance with this Court's directions of May 19 in *Connor* v. *Coleman* that "any necessary special elections" be held "to coincide with the November 1976 Presidential and congressional elections, or in any event at the earliest practicable date." For the past 10 years—1967, 1971, and 1975—Mississippi state legislative elections have been held under court-ordered plans which through multi-member districts and countywide voting discriminated against the black voters of Mississippi and deprived them of the opportunity to elect legislators of their choice. In a state which is 37 percent black (1970 Census), no black Senators have been elected to the 52-member Mississippi Senate. The first black representative was elected to the 122-member House in 1967, and served as the only black representative until

three additional black representatives were elected from the Hinds County single-member districts in 1975. The election of these three black representatives from Hinds County in 1975 shows beyond doubt that the multi-member districts and countywide voting requirement mandated by the District Court in its prior court-ordered plans effectively diluted black voting strength and prevented the election of black legislators.

8. Although the District Court ordered special elections in two House districts, the relief ordered does not go far enough to correct the "irreparably injury" of dilution of black voting strength present in the temporary 1975 plan. In the 1975 plan (and also the 1971 plan), black voters were denied opportunities to elect legislators of their choice in multi-member districts which combined black majority counties with white majority counties to create districtwide white voting majorities (see Districts 3, 10, 32, 33, 34, 37, 38, 52, 47, 56, 81, and 97, *infra*) and by countywide voting in counties with white voting majorities which submerged the voting strength of large concentrations of black voters (see Districts 8, 16, 17, 22, 24, 25, 26, 27, 79, and 89, *infra*).

9. The reasons given by the District Court for failing to order more special elections under its new single-member plan are totally inadequate and demonstrate once again the refusal of the District Court to come to grips with the facts of this case and the requirements of the law. First, the District Court applied the constitutional standard of *White* v. *Regester*, 412 U.S. 755 (1973), and said that the plaintiffs have failed to show that black voters in Mississippi have been denied equal access to the political process (App. C, pp. 4-7). This finding totally ignores Mississippi history and is contrary to the evidence of this case. See J. S. *Connor* v. *Waller*, *supra*, pp. 14-19. The fact that blacks freely voted in the 1976 presidential election and may have

made the difference in the Mississippi vote (App. C, p. 7) is totally irrelevant to the discriminatory impact of at-large voting and multi-member districts in state legislative elections.

Second, the District Court applied the wrong standard in defining the irreparable injury caused by the 1975 temporary plan in terms of the constitutional standard. The District Court ignored the fact that the plan implemented by the court in 1975 was the same plan, with minor exceptions outlined above, to which the Attorney General objected under Section 5 of the Voting Rights Act for racial discrimination. See Pet., *Connor* v. *Coleman*, *supra*, p. 6, n. 1. The District Court also ignored that the 1975 temporary plan totally failed to comply with the mandate of this Court when it failed to meet the equitable requirements of *Mahan* v. *Howell*, *supra*, *Connor* v. *Williams*, *supra*, and *Chapman* v. *Meier*, *supra*, for court-ordered reapportionment plans when 72.95 percent of the House and 53.85 percent of the Senate were elected from multi-member districts in a plan malapportioned by deviations on the court's own figures of 20 percent in the House and 19 percent in the Senate (excluding floterial districts).

Third, the District Court adopted two overly restrictive and largely irrelevant standards in singling out new districts in which special elections should be ordered. The District Court held that no special elections should be ordered in new black majority districts which were carved out of old multi-member districts which were majority black in population (App. C attached, p. 12). This criterion ignores the "practical weaknesses," *Chapman* v. *Meier*, 420 U.S. 1, 15 (1975), which inhere in all multi-member districts: with multiple candidates voters have difficulty making intelligent choices, ballots are lengthy, unwieldy, and confusing, voters feel deprived of a representative directly responsible to them, and single-mem-

ber districts are disadvantaged. This criterion also overlooks the standard developed in Supreme Court and Fifth Circuit decisions, by which the District Court is bound, that the measure of dilution is not population, but voting strength and denial of access to the political process. See *White* v. *Regester, supra;*[2] *Zimmer* v. *McKeithen*, 485 F.2d 1297, 1302-03 (5th Cir. 1973) (en banc), aff'd on other grounds sub nom. *East Carroll Parish School Bd.* v. *Marshall*, —— U.S. ——, 47 L.Ed.2d 296 (1976). Several of the old multi-member districts may have been majority black in total population, but were majority white in voting age population and voting strength (see Districts 8, 16, 17, 22, 24, 25, 26, 32, 33, 34, 37, 38, 47 and 56, *infra*). Further, the District Court did not even consistently apply its own standard. Old Districts 9 (Panola and Yalobusha), 23 (Lowndes, Noxubee, and Oktibbeha), 30 (Claiborne and Warren), and 33 (Adams) were majority white in total population (1970 Census) under the 1975 plan, but the District Court failed to order special elections in all the new majority black districts created out of those old, multi-member districts (see Districts 10, 52, 81, and 89, *infra*).

Next, as to those new districts which the District Court indicated met its standard, new Districts 3, 52, 79, 81, and 97 (App. C attached, pp. 8-12), the District Court ordered special elections in only two of them for the reason (new Districts 52 and 81) that, although the record in this case does not reveal it, no incumbent representatives currently reside in those districts, and thus special elections in additional districts would be required

[2] In *White* v. *Regester, supra*, this Court affirmed a District Court judgment which held that although Mexican-Americans constituted about half the population of Bexar County, Texas (*Graves* v. *Barnes*, 343 F. Supp. 704, 730 (W.D. Tex. 1972)), the at-large, multi-member districts nevertheless unconstitutionally excluded Mexican-Americans from effective participation in the political processes (412 U.S. at 767-70).

to avoid increasing the size of the House. In any event, this justification fails to outweigh the need for immediate relief to overcome the discrimination and dilution of black voting strength present in the 1975 plan. But here we demonstrate that because two incumbent representatives reside in new District 10, a minimum two additional special elections (in new Districts 44 and 88) are all that would be necessary to grant plaintiffs the relief they request. Even if those two offsetting special elections were not ordered, a temporary increase in the House membership by two would not unduly disrupt the operations of state government or "dilute the legislative voting strength of the presently sitting four black members of the House of Representatives" (App. C attached, p. 14).

10. Given that the 1975 temporary plan failed to comply with this Court's mandate in *Connor* v. *Waller, supra*, was based on a legislative plan to which the Attorney General had objected under Section 5 of the Voting Rights Act, and diluted black voting strength through multi-member districts and at-large voting, special elections are required. *Town of Sorrento* v. *Reine*, No. 75-93, decided April 26, 1976; *Hadnott* v. *Amos*, 394 U.S. 358 (1969).[3] Special legislative elections should be ordered in the following new single-member districts:

District 3 (Marshall County, Beats 1, 2, 3, and 4).

Black voting strength in Marshall County was cancelled out in the 1971 court-ordered plan in old multi-member

[3] See also, *Toney* v. *White*, 488 F.2d 310 (5th Cir. 1973) (en banc); *Keller* v. *Gilliam*, 454 F.2d 55 (5th Cir. 1971); *Howard* v. *Adams County Board of Supervisors*, 453 F.2d 455 (5th Cir. 1972) (Order of July 29, 1971), cert. denied, 407 U.S. 925 (1972); *Hall* v. *Issaquena County Board of Supervisors*, 453 F.2d 404 (5th Cir. 1971) (Order of July 29, 1971); *Taylor* v. *Monroe County Board of Supervisors*, 421 F.2d 1038, 1042 (5th Cir. 1970); *Hamer* v. *Campbell*, 358 F.2d 214 (5th Cir. 1966), cert. denied, 385 U.S. 851 (1966).

District 3 (Desoto and Marshall, three representatives)[4] when majority black Marshall (62.0% black) was combined with more populous majority white Desoto (64.7% white) to create a districtwide white majority (54.0% white) in which black voting strength in majority black Marshall was submerged.[5] The 1975 temporary plan[6] perpetuated this dilution by (1) combining Desoto and Marshall in District 3B for the election of a floater representative and (2) enveloping the black population concentration in Marshall large enough for independent representation in a countywide district, District 3A, containing 24,027 persons, 5,856 persons in excess of the norm (18,171), leaving Marshall County voters unconstitutionally underrepresented by a total variance of +32.23%.

The 1976 permanent plan provides black voters in new District 3 with a black majority district which is 67.2% black (1970 Census),[7] and in which blacks constitute 57.5% of the total 1975 estimated voting age population.[8]

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[4] Description of the House districts defined by the 1971 court-ordered reapportionment plan are set out in the District Court's decision, *Connor* v. *Johnson*, 330 F. Supp. 506, 512-16.

[5] A map showing dilution of black voting strength in multi-county, multi-member districts may be found in J.S., *Connor* v. *Waller, supra*, p. 11, and the population statistics for such districts are set out at *id.*, App. D, pp. 1d-2d.

[6] Descriptions of the House districts defined by the 1975 court-ordered reapportionment plan are set out in the District Court's 1975 decision, Pet., *Connor* v. *Coleman, supra*, App. F, pp. 48a-52a.

[7] For beats and precincts for which 1970 Census data was not available, the Census population was estimated based on 1970 Census enumeration district population statistics.

[8] 1975 voting age population statistics are based on the Mississippi State University projections of Ellen S. Bryant and Sanabel El-Attar, *Population of Mississippi Legislative and Congressional Districts, 1970, and Projections to 1975* (1973) (Ex. P-13).

The District Court considered calling a special election in new District 3, but rejected plaintiffs' motion on the basis of purported data not in the record in this case (Opinion of Nov. 12, 1976, Appendix B attached, p. 11):

> "Marshall County has a population of 14,891 black people and 9,101 whites. At the general election of November 4, 1975, a white candidate for representative in District 3A received 5,573 votes. His black opponent received 3,317, carrying ten of the fifty precincts. It would appear that the black people of Marshall County have spoken and we know of no constitutional or equitable principle which would require us to undo the action they have taken."

There is nothing in the record which reflects these election statistics, and the Court has deprived plaintiffs of the opportunity to present evidence to rebut the conclusion drawn. These comments do not negate the fact that District 3A in the 1972 temporary plan had 5,856 persons in excess of the norm, and was malapportioned by a variance of +32.23%. Further, new District 3 is made up of only four supervisors' districts (Districts 1, 2, 3, and 4), whereas old District 3A was a countywide district. Black candidates in Marshall County have been elected county supervisor in District 4, and to the county board of education in Districts 2, 3, and 4. The fact that one black candidate failed to carry the entire county in the 1975 election does not negate the possibility that a black candidate might carry new and reconstituted District 3 which consists of only four supervisors districts, in three of which black candidates have been successful.

District 10 (Panola County, Beats 1, 2, and 5).

Old District 9 in the 1975 temporary plan combined Panola and Yalobusha Counties (two representatives) (Pet., *Connor* v. *Coleman, supra*, App. F, p. 48a). Black

voting strength in majority black Panola County (51.36% black) was diluted by combining it with majority white Yalobusha County (59.35% white) in a multi-member district which had a white districtwide majority of 52.0% and in which blacks constituted only 38.9% of the districtwide 1975 voting age population (Ex. P-13).

The 1976 permanent plan provides black voters in Panola County with a black majority district which is 53.8% black in total population.

Further, two incumbent representatives presently reside in new District 10 (see Affidavit of Frank R. Parker, attached as Appendix H). A special election in this district to cure the dilution of black voting strength in the 1975 temporary plan would thus obviate the necessity of holding special elections in other districts in which dilution is not claimed (see *District 81, infra.*)

District 8 (Coahoma County: Precincts of Coahoma, Lula, Lyon, and Jonestown; Tunica County: Beats 1, 2, 3, and 4, and Armory Precinct)

District 16 (Coahoma County: Beats 4 and 5 and Mattson Precinct)

District 17 (Quitman County; Tunica County: Two Mile Lake Precinct)

In the 1975 temporary plan, Coahoma, Quitman, and Tunica Counties made up a floterial district in which two representatives were elected countywide from Coahoma, two from Quitman and Tunica, and one districtwide from all three counties (Pet., *Connor* v. *Coleman, supra,* App. F, p. 48a). Although all three counties are majority black in population, no black countywide candidates have been elected in Coahoma or Quitman Counties,[9] and the

[9] In the 1975 elections, a black candidate was elected Circuit Clerk in Tunica County when, as rarely happens, the white vote was split in the general election among several white candidates. Black candidates have been successful in gaining election to county offices elected by supervisors' districts (beats) in Coahoma County, but not countywide.

uncontradicted evidence in this case shows that countywide black voting strength, measured in terms of black registration and turnout, is less than 50 percent of the total. Testimony of Rims Barber, Associate Director of Delta Ministry, Hearing Transcript, May 7, 1975, pp. 219-47, Exs. P-30, P-31.

Thus, in the 1975 temporary plan, black voting strength was minimized and cancelled out by countywide and districtwide voting. In the 1976 permanent plan, four single-member districts are carved out of this three-county area which remedy the dilution present in the 1975 plan and give black voters, for the first time, opportunities to elect legislators of their choice in three of the districts. New District 8 is 73.50% black, new District 16 is 74.52% black, and new District 17 is 58.7% black. The fourth district, new District 15, is white majority, and no special elections are requested in that district. Opportunities for black representation are enhanced by the fact that the districts are now single-member districts and are smaller in area, thus making campaigning less expensive for low income candidates and enhancing the opportunities for voters to make more intelligent and informed choices among the candidates.

District 22 (Bolivar County: Beat 1 and Pace, Longshot, Shaw, Skene, and Stringtown Precincts; Sunflower County: Boyer-Linn Precinct).

District 24 (Bolivar County: Beat 3 and North Cleveland and Merigold Precincts).

In the 1975 temporary plan, three representatives were elected countywide from Bolivar County (old District 14) (Pet., *Connor* v. *Coleman, supra,* App. F, p. 49a). Bolivar County is one of the largest counties in the state with

a land area of 923 sq. mi.[10] No black candidates have been successful in gaining election to countywide office, although black candidates have carried district offices elected by supervisors' districts (beats). In voting strength, blacks countywide have only a slim 51.4% of the 1975 voting age population, but the uncontradicted evidence in this case indicates that because of disproportionately lower voter registration and turnout caused by socioeconomic factors and the history of discrimination in voting, black countywide voting strength is less than 50%. Testimony of Rims Barber, Associate Director of Delta-Ministry, Hearing Transcript, May 7, 1975, pp. 219-47, Exs. P-30, P-31.

In the 1976 permanent plan, three new single-member districts are carved out of Bolivar County. Two of these new districts—Districts 22 and 24—have substantial black population majorities of 69.0% and 70.9% and also are majority black in estimated 1975 voting age population majorities of 59.6% and 54.8%.

District 25 (Sunflower County, Beats 1 and 3 and Moorehead Precinct).

District 26 (Sunflower County, Beat 5, Sunflower and Indianola Precincts in Beat 2, Dockery, Doddsville, and Ruleville Precincts in Beat 4).

In 1975 temporary plan in old District 13 two representatives were elected countywide from Sunflower County (Pet., *Connor* v. *Coleman*, *supra*, App. F, p. 49a). Although blacks had a slight 53.0% edge in the 1975 voting age population (Ex. P-13), the fact of countywide voting in Sunflower County, a county in which no black candidate has gained election to any countywide office, and uncontradicted voting strength statistics showing that the optimum black vote was less

[10] Secretary of State Heber Ladner, *Mississippi Official and Statistical Register*, 1972-1976, p. 157.

than 50% (Barber testimony, May 7, 1975 Tr. 219-247; Exs. P-30, P-31), shows that countywide voting in this multi-member district diluted black voting strength.

Under the 1976 permanent plan, this dilution is offset by the elimination of countywide voting and the creation of single-member districts, in one of which (District 25), blacks constitute 66.9% of the total population (1970 Census) and 57.6% of the 1975 voting age population, and in the other of which (District 26) blacks constitute a 58.5% majority of the total population.

District 27 (Tallahatchie County: Beats 1, 2, 4, and 5 and Paynes Precinct).

Old District 12 in the 1975 temporary plan consisted of all of Tallahatchie County (one representative) (Pet., *Connor* v. *Coleman*, *supra*, App. F, p. 49a). Uncontradicted projections of the voting age population by race show that countywide black and white voting age population are approximately 50-50 (Ex. P-13). Given that voting was countywide and that black voter registration is disproportionately lower than white registration (Ex. P-7; Ex. P-10), blacks were deprived of the opportunity to elect candidates of their choice in countywide voting.

Under the 1976 permanent plan, this dilution caused by countywide voting is offset by subdividing Tallahatchie County into a single-member district in which blacks are given an opportunity to elect candidates of their choice in new District 27 in which blacks constitute 62.4% of the total population (1970 Census) and an estimated 52.6% of the 1975 voting age population (Ex. P-13).

District 32 (Issaquena County; Washington County: Beat 1 and Avon Precinct).

District 33 (Washington County: Ward Center, Community Center, Arcola, and Hollandale Precincts).

District 34 (Washington County: Beat 3 and New County Garage Precinct).

In the temporary 1975 county-ordered plan, four representatives were elected districtwide in old District 15 from Issaquena and Washington Counties (Pet., *Connor* v. *Coleman*, *supra*, App. F, p. 49a). The uncontradicted voting age statistics show that whites constituted a 50.6% majority of the 1975 voting age population of this district (Ex. P-13), thus diluting black voting strength of the majority black population of Issaquena County and of the 38,360 blacks (1970 Census) living in Washington County.

Under the 1976 permanent plan, four single-member districts are carved out of this two-county area, three of them districts in which blacks, for the first time, have a reasonable chance of electing legislators of their choice. District 32 is 57.9% black in population (1970 Census data), District 33 is 55.7% black in population (1970 Census data), and District 34 is 56.0% black population (1970 Census data). Further, all three of these districts, based on 1975 voting age population projections, have black voting age population majorities.

District 37 (Leflore County; Beats 4 and 5).

District 38 (Carroll County; Leflore County: Northeast Greenwood and East Greenwood Precincts; Attala County: Beat 3 less Possumneck Precinct)

In the 1975 temporary plan, three representatives were elected districtwide from old District 17, a multi-county, multi-member district constituting of Carroll and Leflore Counties (Pet., *Connor* v. *Coleman*, *supra*, App. F, p. 49a). The uncontradicted evidence indicates that whites held a districtwide 52.7% majority of the projected 1975 voting age population of this district (Ex. P-13). In the Leflore County redistricting case, the District

Court found that blacks in Leflore County had been denied equal access to the political process, *Moore* v. *Leflore County Bd. of Election Comm'rs*, 361 F. Supp. 603, 605-06 (N.D. Miss. 1972), aff'd, 502 F.2d 621 (5th Cir. 1974), and rejected a proposal for at-large elections, holding that at-large, countywide elections impermissibly dilute and cancel out black voting strength:

> "Regardless of abstract considerations, however, the record in Leflore County fairly requires the conclusion that blacks have been discouraged in political activity or from offering for the office of county supervisor when elections are conducted on an at-large basis. * * * To order at-large elections * * * would diffuse black political strength in support of black candidates running for such offices; and this is impermissible because of the admittedly low participation by blacks in past electoral processes." 361 F. Supp. at 613-14.

Although Judge Coleman was a member of the three-judge panel originally convened in this case, 351 F. Supp. 848 (N.D. Miss. 1971) (three-judge court), this decision, affirmed on appeal by the Fifth Circuit, was ignored by the District Court here in refusing to order special elections.

Under the 1976 permanent plan, three single-member districts are carved out of old District 17, two of which are majority black. In new District 37, which includes Beats 4 and 5 of Leflore County, blacks constitute 69.1% of the total population (1970 Census), and an estimated 61.2% of the 1975 projected voting age population. In new District 38, which includes Carroll and part of Leflore, blacks constitute 51.3% of the total population.

District 52 (Noxubee County; Lowndes County: Crawford and Artesia Precincts).

In the 1975 temporary court-ordered plan, old District 23 was a floterial district which elected four representa-

tives; two representatives were elected from Lowndes County (District 23, two representatives were elected from a multi-county subdistrict which included Oktibbeha and Noxubee Counties (District 23A), and one representative was elected districtwide from Lowndes, Noxubee, and Oktibbeha Counties (District 23B). Pet., *Connor* v. *Coleman*, *supra*, App. F, p. 49a. Lowndes and Oktibbeha are majority white counties which are 67.07% and 64.58% white, respectively (1970 Census). Noxubee is a smaller majority black county (65.77% black). The 1975 temporary plan cancelled out black voting strength in Noxubee by combining Noxubee with Oktibbeha in District 23A, which had a white population majority of 54.40% and a white 1975 projected voting age population majority of 66.6% (Ex. P-13), and with both Oktibbeha and Lowndes in District 23B, which had a white population majority of 61.2% and a white 1975 projected voting age population majority of 71.0% (Ex. P-13).

New District 52 in the 1976 permanent plan offsets this dilution by creating a new single-member district consisting of Noxubee County and two precincts in Lowndes County in which blacks constitute 68.0% of the total population and an estimated 59.4% of the projected 1975 voting age population. For the first time, blacks who constitute the majority population of Noxubee County have the opportunity to elect legislators of their choice.

The District Court itself recognized that the old floterial arrangement cancelled out black voting strength in Noxubee County, Appendix B attached, pp. 8-9, but refused to order special elections in District 52 for the reason that: "A special election in new District 52 would necessitate special elections in new Districts 43, 44, 45, and 46, of which Noxubee County is not a part" (Appendix B attached, p. 9). There is nothing in the record

to show, and the District Court fails to state why, a special election would be required in four other districts. We assume that the District Court is referring to the fact that no incumbent representative lives in new District 52, and thus special elections would be required in other districts to avoid increasing the size of the Mississippi House of Representatives. However, since there are two representatives living in new District 44 which formerly was in old Districts 23A and 23B (see Affidavit of Frank R. Parker attached as Appendix H), a special election could be called in new Districts 44 and 52, thus requiring only one additional special election rather than four to retain a 122-member House.

District 47 (Sharkey County; Humphreys County: Beat 5; Yazoo County: Carter, Lake City, Zion, Eden, Free Run, East Midway, West Midway, Harttown, Enola, Fairview, and Holly Bluff Precincts).

District 56 (Yazoo County: Benton, Center Ridge, Robinette, East Courthouse, West Courthouse, South City Hall, North City Hall, West Lintonia, and East Lintonia Precincts).

In the 1975 temporary plan, two representatives were elected districtwide from old District 29 which included Sharkey and Yazoo Counties. Although both counties were majority black (1970) in total population, the uncontradicted evidence in this case indicates that whites held a districtwide majority of 52.9% of the total projected 1975 voting age population in this district (Ex. P-13), thus depriving black voters of the opportunity to elect legislators of their choice.

This dilution is offset under the 1976 plan in which two black majority districts are carved out of old District 29. New District 47 has a black population majority of 64.8% and an estimated 1975 black voting age

population majority of 55.5%. New District 56, included entirely within Yazoo County, has a slight black population majority of 50.9%.

District 79 (Lauderdale County: Meridian City Precincts 5, 6, 9, 13, 14, 15, 16, 17, and 18, and East Bonita Precinct)

In old District 24 of the 1975 temporary plan four representatives were elected districtwide from Lauderdale and Kemper Counties (Pet., *Connor* v. *Coleman*, *supra*, App. F, p. 49a). Under this arrangement, the voting strength of the 20,630 blacks residing in Lauderdale (1970 Census), more than enough to create an 18,171 single-member district, was diluted by districtwide multi-county voting in a district in which whites were a majority of the total population (65.5%) (1970 Census) and a greater majority of the projected 1975 voting age population (72.0%) (Ex. P-13).

This dilution is diminished in new District 79, in which blacks constitute 56.1% of the total population of the new district.

The District Court itself ordered a special election in this new district (Appendix C attached, p. 10), but deferred setting any date for the special election until the time for appeal was exhausted or until an appeal had been decided on the merits.

District 81 (Claiborne and Jefferson Counties).

In the 1975 temporary plan, Claiborne County—which is 74.58% black (1970 Census) and which has numerous black elected officials both countywide and by district—was combined in old District 30 with more populous white Warren County (58.85% white) for the election of three representatives in a white majority legislative district which was 52.7% white in population (1970 Census) and 58.5% white in projected 1975 voting age

population (Ex. P-13). Pet., *Connor* v. *Coleman*, *supra*, App. F, p. 50a.

Under the 1976 permanent plan, this dilution is remedied by combining Claiborne County with majority black Jefferson County resulting in new District 81 which has a black population majority of 74.9% and a black projected 1975 voting age population majority of 69.9%.

The District Court itself noted these population statistics showing dilution of black voting strength in old District 30 (Appendix B attached, pp. 10-11), but refused to order special elections on the grounds (1) that a special election in new District 81 would necessitate special elections in new Districts 53, 54, and 55 of Warren County (apparently for the unproved reason that no incumbent representative resides in new District 81), and (2) that the Warren County redistricting currently is on appeal to this Court, *United States* v. *Board of Supervisors of Warren County, Mississippi*, No. 76-489, in a proceeding which "necessarily entails the reconstitution of voting precincts" (Appendix B attached, p. 11). These reasons are totally insufficient for denying black voters in Claiborne and Jefferson the opportunity, which has been denied them by court-ordered plans since 1965, of electing legislators of their choice. New District 10, in which we request this Court to order a special election to remedy the dilution present in the 1975 temporary plan, currently has two representatives residing in that district (see Affidavit of Frank R. Parker attached as Appendix H). Thus, if a District 10 special election reduces the number of representatives by one, a special election can be ordered in new District 81 which has no incumbent representative without requiring any special election in Warren County and without increasing the size of the House.

District 89 (Adams County: Beats 4 and 5, and Somerset Precinct).

In the 1975 temporary plan, Adams County (old District 33) elected two representatives countywide (Pet., *Connor* v. *Coleman*, *supra*, App. F, P. 51a). At-large, countywide voting diluted the voting strength of the 17,865 blacks living in Adams County, a population concentration very close to the norm of 18,171, because Adams County is majority white in population (51.93% white, 1970 Census) and also majority white in projected 1975 voting age population (56.4% white VAP) (Ex. P-13). In the Adams County redistricting case, *Howard* v. *Adams County Board of Supervisors*, Civil No. 1352 (N), S.D. Miss., the District Court in an unreported opinion considered but rejected as inequitable the Board's proposal for at-large elections for county supervisors (Opinion of July 20, 1971, pp. 41-42).

Two new single-member districts are established in Adams County in the 1976 permanent plan. The dilution in the prior plan is offset in new District 89 in which blacks have a population majority of 53.0%.

No incumbent representative currently resides in new District 89 (see Affidavit of Frank R. Parker, attached as Appendix H). In order to maintain a 122-member House, a special election also would be required in District 88, formerly within old District 33, in which two incumbent representatives reside.

District 97 (Wilkinson County; Amite County: Beats 1, 2, and 3)

In the 1975 plan, Wiikinson County—which has a black population majority of 67.56% (1970 Census) and a black 1975 voting age population majority of 62% (Ex. P-13)—was placed together with Amite County and Franklin County for the election of two representatives districtwide in old District 34, which had a white districtwide 1975 projected voting age population majority of 54.2% (Ex. P-13) (see Pet., *Connor* v. *Coleman*, *supra*, App. F, p. 51a). Under this arrangement, the

black majority of Wilkinson was denied the opportunity to elect representatives of their choice.

This dilution is diminished in the 1976 permanent plan in new single-member District 97, which has a black population majority of 60.6% (1970 Census data) and a black 1975 voting age population majority of 53.3%.

Noting these statistics, the District Court ordered a special election in new District 97 (Appendix B attached, p. 12), but deferred setting a date for the special election until the time for taking an appeal had run or until an appeal had been decided on the merits.

REQUESTED SPECIAL HOUSE ELECTIONS

New Single-Member District	% Black (1970 Census)	1975 Black VAP Percent [1]	Old District	1975 Voting Age Pop. % White	1975 Voting Age Pop. % Black
3	67.2%	57.5%	3 [2]	69.3%	30.7%
10	53.8%	—	9	61.1%	38.9%
8	73.5%	64.5%	11	43.4%	56.6% [3]
16	74.5%	67.3%	11A	46.4%	53.6% [3]
17	58.7%	—	11B	44.5%	55.5% [3]
22	69.0%	59.6%	14	48.6%	51.4% [3]
24	70.9%	54.5%			
25	66.9%	57.6%	13	47.0%	53.0% [3]
26	58.5%	—			
27	62.4%	52.6%	12	50.0%	50.0%
32	57.9%	52.1%	15	50.6%	49.4%
33	55.7%	50.6%			
34	56.0%	50.9%			
37	69.1%	61.2%	17	52.7%	47.3%
38	51.3%	—			
52	68.0%	59.4%	23	74.6%	25.4%
			23A	66.6%	43.4%
			23B	71.0%	29.0%
47	64.8%	55.3%	29	52.9%	47.1%
56	50.9%	—			
79	56.1%	—	24	72.0%	38.0%
81	74.9%	69.9%	30	58.5%	41.5%
89	53.0%	—	33	56.4%	43.6%
97	60.6%	53.3%	34	54.2%	45.8%

[1] Estimated black 1975 voting age population for new districts based on 1975 projections not shown where less than 50%.

[2] Figures given for old District 3 are for district as structured in 1971 legislative elections and for District 3B under temporary 1975 plan.

[3] According to the uncontradicted testimony in this case, the "optimum black vote" in each of these districts, measured in terms of voter registration and turnout, was less than 50% (May 7, 1975 Hearing Transcript, pp. 219-247; Exs. P-30, P-31).

11. In 1971, on instructions from this Court to devise single-member legislative districts for Hinds County, 402 U.S. 690, 692 (1971), the District Court found as an "irrefragable fact" that there were "insurmountable difficulties" which prevented the division of Hinds County into single-member districts (330 F. Supp. 521, 523). What was impossible to accomplish in 1971 was accomplished in 1975 between June 10 and July 11. Hinds County was divided into single-member districts for House and Senate (Order of July 11, 1975, Pet., *Connor* v. *Coleman*, *supra*, App. F), and in the 1975 elections three black representatives were elected from the three black majority House districts, the first from Hinds County since Reconstruction. The District Court's 1971 finding, which was erroneous prevented the election of black legislators and prevented the black voters of Hinds County from electing legislators of their choice for four years.

Now, the Final Judgment of the District Court, by denying any special election relief for all but two of the new black majority single-member districts created in the permanent plan, denies black voters who resided in discriminatory at-large and multi-member districts in the 1971 and 1975 elections the opportunity to elect legislators of their choice for another four years, until 1979. Since the 1977 regular session of the Mississippi Legislature is scheduled to convene January 4, 1977, deferring special elections in the two House districts selected for those elections until this appeal is decided on the merits deprives black voters in those districts of any effective relief for the 1977 session of the legislature, and violates the assurances of the District Court itself that any special elections ordered would be held "in time for the person elected to take his seat when the Legislature is convened in regular session in January, 1977" (Appendix D attached, p. 33).

Unless the requested special elections are ordered by this Court prior to the convening of the 1977 session of the Legislature, the people of Mississippi will continue to be denied a properly constituted legislature. As this Court said in May: "Ten years of litigation have not yet resulted in a constitutionally apportioned Mississippi Legislature." *Connor* v. *Coleman*, *supra* (slip op., p. 1). The voters of Mississippi have suffered for ten years under court-ordered legislative reapportionment plans which failed to comply with this Court's directives in *Connor* v. *Williams*, *supra*, and *Chapman* v. *Meier*, *supra*, and which, in the face of an extensive past history of disenfranchisement through discrimination in voter registration and the poll tax, invidiously excluded Mississippi blacks from effective participation in legislative elections through multi-county, multi-member districts, at-large, countywide voting, and malapportionment. Now that this dilution of black voting strength has been alleviated by a permanent plan which provides single-member districts statewide, and which for the first time since the Voting Rights Act of 1965 provides Mississippi blacks with an opportunity to effectively participate in legislative elections in 22 new majority black single-member House districts, special elections in those districts should be ordered without further delay. More is at stake here than merely "the danger of denying justice by delay." *Kelly* v. *Metropolitan County Board of Education of Nashville*, 436 F.2d 856, 862 (6th Cir. 1970); see also, *Alexander* v. *Holmes County Board of Education*, 396 U.S. 19 (1969). Appellants' constitutional and statutory rights—"warrants for the here and now," *Watson* v. *City of Memphis*, 373 U.S. 526, 533 (1963)—already have been denied in the face of a decade of efforts to secure those rights—not in the streets, but in the courts. The injustice and inequities of the 1971 and 1975 plans will be perpetuated unless this Court acts now to order the special elections requested.

12. The interim relief requested by appellants is reasonable and in the public interest. No special elections for the Mississippi Senate are requested; plaintiffs continue to contest the District Court's Senate plan, and if relief is not granted in a motion to alter or amend the judgement, plaintiffs plan an appeal from the Senate plan.[11] The House districts in which special elections are requested are only those in which black voters previously have been denied effective participation in the electoral processes. Because the new House districts are based on current supervisors' districts and voting precincts, no realignment of precinct boundaries is necessary before the new plan can be implemented. No special elections are requested in new single-member House districts established for the 1975 elections, except for the extremely malapportioned Marshall County district. No incumbent legislators can claim harm from special elections now since they were put on notice by the District Court itself that the 1975 temporary plan was for the 1975 elections only, and that special elections in 1976 would follow.

13. Appellants move the Court to issue an order requiring the appellees to direct and order special elections in the above-named new House districts not less than 30 days from the date of this Court's order. Mississippi law requires "at least ten days' notice" of special legislative elections, Miss. Code Ann. § 23-5-201 (1972). But because these are new districts, thirty days notice of special elections should be given to allow candidates and voters to become acquainted with the new boundaries of

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[11] Plaintiffs plan to file a motion to alter or amend the Final Judgment contesting the Senate plan and certain districts in the House plan. If that motion is denied, plaintiffs will seek review of the permanent plan in this Court on the merits. Plaintiffs do not contest the House plan in its entirety, but only certain districts which are not included in the list of House districts in which we request special elections.

their districts, and to give candidates time within which to qualify and campaign for legislative office. Mississippi law also requires a majority vote to win a special election, and if no candidate receives a majority, a run-off is required two weeks later. Miss. Code Ann. § 23-5-203 (1972). Hence, under this timetable, 44 days would be needed to complete the special election process. Accordingly, we request the Court to postpone the convening of the 1977 regular session of the Mississippi Legislature to allow adequate time for the special elections and run-offs, if necessary, to be held. This postponement should not delay the convening of the Legislature for more than 30 days. The 1977 session of the Legislature is scheduled to last three months.

CONCLUSION

For the foregoing reasons, and on the basis of the authorities cited, appellants pray that this Court issue an order directing the appellees to order and direct special legislative elections in House districts 3, 8, 10, 16, 17, 22, 24, 25, 26, 27, 32, 33, 34, 37, 38, 47, 52, 56, 79, 81, and 97 as established by the Final Judgment of the District Court entered November 18, 1976. In order to avoid increasing the size of the Mississippi House of Representatives, we also request special elections in new House districts 44 and 88, but these are not necessary to cure the discrimination present in the 1975 temporary plan. This Court should direct that these special elections should be held "at the earliest practicable date," *Connor* v. *Coleman*, *supra* (slip op. at 5), but in any event not less than 30 days after this Court's order. This Court should also direct the appellees temporarily to postpone convening the 1977 regular session of the Mississippi Legislature until these special elections are held, with any necessary runoffs, and the winning candidates

are certified. Alternatively, appellants request this Court to expedite this appeal on the merits.

Respectfully submitted,

/s/ Frank R. Parker
FRANK R. PARKER

Lawyers' Committee for
Civil Rights Under Law
P.O. Box 1971
Jackson, Mississippi 39205
(601) 948-5400

ROBERT A. MURPHY
ELIZABETH RINDSKOPF
WILLIAM E. CALDWELL

Lawyers' Committee for
Civil Rights Under Law
Suite 520 Woodward Building
733 Fifteenth Street, N.W.
Washington, D.C. 20005
(202) 628-6700

Attorneys for Appellants

APPENDICES

APPENDIX F

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

Civil Action No. 3830(A)

[Filed Sep. 16, 1976, Southern District of Mississippi, Harvey G. Henderson, Clerk, By ————————, Deputy]

PEGGY J. CONNOR, *et al.*,
Plaintiffs,

—vs—

CLIFF FINCH, *et al.*,
Defendants,

and

UNITED STATES OF AMERICA,
Plaintiff-Intervenor.

MOTION FOR SPECIAL ELECTIONS
(HOUSE PLAN)

Plaintiffs, by their attorneys, move the Court pursuant to its Judgment of September 8, 1976, for an order shortening the terms of office of incumbents and ordering special elections to coincide with the November 2, 1976 Presidential election, or in any event prior to January 1, 1977 in the following 42 [1] new districts:

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[1] Seven of the black majority districts are also districts in which incumbents are pitted against each other or districts without any representation under the new plan.

(1) Districts in which black voting strength was diluted, cancelled out, and minimized under the 1975 temporary court-ordered plan, but which under the new plan have black population majorities (1970 Census) and/or black voting age population majorities (1975 estimates): New Districts 3, 8, 10, 15, 16, 17, 22, 24, 25, 26, 27, 32, 33, 34, 37, 38, 47, 52, 56, 79, 81, 89, and 97.

(2) Districts in which incumbent House members are thrown together in the same district: New Districts 6, 8, 10, 20, 44, 53, 56, 74, 83, 88, 93, 99, and 113.

(3) Districts which are without any representation under the new plan because the new districts place 13 incumbent representatives together in the same district: New Districts 4, 11, 16, 30, 47, 52, 54, 75, 81, 89, 95, 98, and 115.

A. *Dilution and Minimization of Black Voting Strength.*

District 3.

Black voting strength in Marshall County has been diluted since the 1971 court-ordered plan in which majority black Marshall County (62.0% black) was combined with larger, majority white Desoto (35,885 persons, 64.7% white) in a white majority multi-member district (54.0% white, 45.9% black) which diluted black voting strength in Marshall. The 1975 temporary plan perpetuated this dilution by (1) combining Desoto and Marshall in District 3B for the election of a floater representative and (2) enveloping the black population concentration in Marshall large enough for independent representation in a countywide district, District 3A, containing 24,027 persons, 5,856 persons in excess of the norm, leaving Marshall County voters unconstitutionally underrepresented by a total variance of +32.23%.

The 1976 permanent plan provides black voters in Marshall County with a black majority district which is 67.2% black (1970 Census),[2] and in which blacks constitute 57.5% of the total 1975 estimated voting age population (see Exhibit 1, attached).[3]

District 10.

In the 1975 temporary plan, black voting strength in majority black Panola County (51.36% black) was diluted by combining it with majority white Yalobusha County (59.35% white) in a multi-member district which had a white districtwide majority of 52.0% and in which blacks constituted only 38.9% of the districtwide 1975 voting age population (Ex. P-13).

The 1976 permanent plan provides black voters in Panola County with a black majority district which is 53.8% black in total population (Exhibit 1, attached).

Districts 8, 15, 16, and 17.

Black voting strength in the 1975 temporary plan in old Districts 11 (Coahoma, two representatives, 11A (Quitman and Tunica), and 11B (Coahoma, Quitman, and Tunica) was diluted by countywide and multi-county districtwide voting in counties in which no black candidates had been successful in gaining election to countywide office and in which, measuring the realities of black voting strength in terms of registration and turnout, the optimum black vote is less than 50% even though blacks constitute a majority of the voting age population (tes-

[2] For beats and precincts for which 1970 Census data was not available, the Census population was estimated based on 1970 Census enumeration district population statistics.

[3] 1975 voting age population statistics are based on the Mississippi State University projections of Ellen S. Bryant and Sanabel El-Attar, *Population of Mississippi Legislative and Congressional Districts, 1970, and Projections to 1975* (1973) (Ex. P-13).

timony of Rims Barber, Associated Director of Delta Ministry, May 7, 1975 Tr. 219-247, Exs. P-30, P-31).

In the 1976 permanent plan, dilution of black voting strength is substantially diminished in two districts, Districts 8 and 16, in which blacks constitute, respectively, 74.0% and 69.0% of the total population, and 65.3% and 61.8% of the 1975 voting age population (Ex. P-13). In two other districts, Districts 15 and 17, blacks constitute majorities of 54.7% and 58.7% of the total population. The creation of single-member districts, thus eliminating the necessity for candidates to run in countywide and multi-county districts, plus these increased black population statistics in single-member districts, gives black voters, for the first time, a realistic opportunity to elect candidates of their choice.

District 27.

In old District 12 in the 1975 temporary plan, 1975 black voting age population was approximately 50-50 with white voting age population in Tallahatchie County (Ex. P-13). Given that voting was countywide and that black voter registration is disproportionately lower than white registration (Ex. P-7; Ex. P-10), blacks were deprived of the opportunity to elect candidates of their choice.

Under the 1976 permanent plan, this dilution caused by countywide voting is offset by subdividing Tallahatchie County into a single-member district in which blacks are given an equal opportunity to elect candidates of their choice in a district in which blacks constitute 62.4% of the total population (1970 Census) and 52.6% of the 1975 voting age population (Ex. P-13) (see Exhibit 1, attached).

Districts 25 and 26.

In the 1975 temporary plan, although blacks had a slight 53.0% edge in the 1975 voting age population

(Ex. P-13), the fact of countywide voting in Sunflower County, a county in which no black candidate has gained election to any countywide office, and uncontradicted voting strength statistics showing that the optimum black vote was less than 50% (Barber testimony, May 7, 1975 Tr. 219-247; Exs. P-30, P-31), shows that countywide voting in this multi-member district diluted black voting strength.

Under the 1976 permanent plan, this dilution is offset by the elimination of countywide voting and the creation of single-member districts, in one of which (District 25), blacks constitute 66.9% of the total population (1970 Census) and 57.6% of the 1975 voting age population, and in the other of which (District 26) blacks constitute a 58.5% majority of the total population (see Exhibit 1, attached).

Districts 22 and 24.

In the 1975 temporary plan, black voting strength was diluted in old District 14, Bolivar County, by (1) at-large, countywide voting in a county in which no black candidate has been elected to countywide office, and (2) in a geographically large (923 sq. mi) district electing 3 representatives, and (3) in which although blacks had a slim 51.4% 1975 voting age population majority, because of lower registration and turnout the optimum black vote was less than 50% (Barber testimony, May 7, 1975 Tr. 219-247, Exs. P-30, P-31).

This dilution of black voting strength is diminished in single-member Districts 22 and 24, in which blacks constitute both a majority of the total population and a substantial majority of the 1975 voting age population (59.6% and 54.5% respectively) (see Exhibit 1, attached).

Districts 32, 33, and 34.

1975 temporary plan District 15 (Washington and Issaquena Counties) was a geographically large (692 sq. mi) multi-county, multi-member district electing 4 representatives, in which black voting strength was diluted and in which blacks constituted a minority of only 49.5% of the 1975 voting age population (Ex. P-13). The voting strength of blacks living in majority black Issaquena County, and the voting strength of 38,360 blacks living in Washington County were diluted by encompassing them in a white voting age population majority district (see Exhibit 1, attached).

Under the 1976 permanent plan, three single-member districts carved out of this large multi-member district, Districts 32, 33, and 34, are both majority black in population and in 1975 voting age population (see Exhibit 1), thus alleviating the manifest dilution effected by the prior multi-member district.

Districts 37 and 38.

The 1975 temporary plan combined Leflore County and Carroll County in a multi-county, multi-member district electing three representatives in which the substantial potential of black voting strength of Leflore County was diluted by including it in a district in which whites held a 52.7% majority of the total 1975 voting age population (Ex. P-13). At-large countywide and districtwide voting was perpetuated in this district in the 1975 plan even though the U.S. District Court for the Northern District of Mississippi and the U.S. Court of Appeals for the Fifth Circuit had ruled that at-large voting in Leflore County unconstitutionally diluted black voting strength. *Moore* v. *Leflore County Bd. of Election Commissioners*, 351 F. Supp. 848 (N.D. Miss. 1971) (three-judge court) (striking down at-large elections), 361 F. Supp. 603 (N.D. Miss. 1972), 361 F. Supp. 609 (N.D.

Miss. 1973) (refusing to allow at-large elections), *aff'd*, 502 F.2d 621 (5th Cir. 1974).

This unconstitutional dilution has now been offset in new Districts 37 and 38. In District 37, which includes Beats 4 and 5 of Leflore County, blacks constitute 69.1% of the total population (1970 Census), and 61.2% of the 1975 voting age population. In District 38, which includes Carroll and part of Leflore, blacks constitute 51.3% of the total population.

District 52.

Old Districts 23, 23A, and 23B in the 1975 temporary plan (electing a total of five representatives) diluted black voting strength by combining majority black voting strength by combining majority black Noxubee County (65.8% black) with majority white Oktibbeha County (64.6% white) in District 23A in which whites were 66.6% of the 1975 voting age population districtwide (Ex. P-13) and with both Oktibbeha and majority white Lowndes County (67.1% white) in District 23B, in which whites were 71.0% of the 1975 voting age population districtwide (Ex. P-13).

New District 52 offsets this dilution of Noxubee black voting strength by creating a single-member district in which blacks constitute 68.0% of the total population and an estimated 59.4% of the 1975 voting age population.

District 79.

The 1975 temporary plan in old District 24 diluted black voting strength through countywide and districtwide voting in a multi-member district which elected four representatives from Kemper and Lauderdale Counties. Under this arrangement, the voting strength of the 20,630 blacks residing in Lauderdale, more than enough to create an 18,171 single-member district, was diluted by districtwide multi-county voting in a district in which whites

were a majority of the total population (65.5%) and a greater majority of the 1975 voting age population (72.0%) (Ex. P-13).

This dilution is diminished in new District 79, in which black constitute 56.1% of the total population of the new district.

Districts 47 and 56.

In the 1975 temporary plan, Sharkey and Yazoo Counties were placed together in a multi-member district (old District 29). Although both counties were majority black in total population, the combining of the two in a single multi-county, multi-member district diluted black voting strength by producing a district in which whites constituted a 52.9% majority of the 1975 voting age population (Ex. P-13). This result is achieved because, although both counties are black majority in population, Yazoo County has a white 1975 voting age population majority of 55% (Ex. P-13).

This dilution is offset under the 1976 plan in which two black majority districts are carved out of old District 29. District 47 has a black populati[illegible]jority of 64.8% and an estimated 1975 black voting age population majority of 55.5%. District 56, included entirely within Yazoo County, has a slight black population majority of 50.9%.

District 81.

Of all the multi-member districts created by the 1971 and 1975 temporary plans, the discrimination in old District 30 was among the most egregious. Claiborne County, which is one of the blackest counties in the state (74.58% black, 1970 Census) and which has numerous black countywide elected officials, was combined with 58.85% white majority Warren County with the effect of diluting black voting strength in a white districtwide

population majority of 52.7% and a greater white districtwide 1975 voting age population majority of 58.5%. Further, the voting strength of 18,355 blacks living in Warren County was diluted and cancelled out in the white districtwide population and voting age population majority.

Under the 1976 plan, majority black Claiborne is combined with majority black Jefferson County in new District 81 which has a black population majority of 74.9% and a black 1975 estimated voting age population majority of 69.9%.

District 89.

Although there are 17,865 blacks in Adams County, enough to comprise a majority in a single-member district, black voting strength was cancelled out in the 1975 plan in old District 33 by countywide voting in a multi-member district which had a white population majority of 51.93% (1970 Census) and a greater white 1975 voting age population majority of 56.4% (Ex. P-13). Further, in the Adams County redistricting case, *Howard* v. *Adams County Board of Supervisors*, Judge Nixon in an unreported District Court decision rejected the Board's proposal for countywide voting for supervisors as inequitable (Civil No. 1352(N), S.D. Miss., Vicksburg Div., Opinion of July 20, 1971).

This dilution is offset in the 1976 single-member plan by giving Adams County blacks a black population majority of 53.0% in new District 89.

District 97.

In the 1975 plan, black voting strength was diluted and cancelled out in old District 34, comprising Amite, Franklin, and Wilkinson Counties, by combining Wilkinson, which had a black voting age population majority of 62% (1975, Ex. P-13), with the two white voting age

population majority counties of Amite (59% white 1975 VAP) and Franklin (67% white 1975 VAP). The district had a total white 1975 voting age population majority of 54.2%, thus depriving black voters of any realistic opportunity to elect legislators of their choice.

Under the 1976 plan, District 97, which includes Wilkinson and three beats of Amite, has a black population majority of 60.6% and a black 1975 voting age population majority of 53.3%.

Constitutional Standards.

The above discussion points out the districts in the 1975 plan in which black voting strength was diluted and which that dilution is diminished or offset to varying degrees by the single-member districts contained in the 1976 plan. For a demonstration of the constitutional standards and their applicability to the old districts of the 1975 plan, we would refer the Court to our previous memos on this subject, including Plaintiffs' Memorandum of Law, filed February 14, 1975, Plaintiffs' Supplemental Post-Trial Memorandum of Law, filed May 10, 1975, Appellants' Jurisdictional Statement, *Connor* v. *Waller*, 421 U.S. 656 (1975), Plaintiffs' Motion to Alter or Amend Judgment, filed July 21, 1975, and Plaintiffs' Memorandum of Law, filed June 23, 1976.

B. *Districts in Which Incumbents Are Placed Together in a Single District and Districts Which Are Not Represented in the New Plan*

Plaintiffs also urge the Court to order special elections in those districts in which two incumbents are thrown together in a single new district, and in those districts in which, under the new plan, there are currently no representatives.

The reasons in both cases are simple and obvious. Each district which contains two incumbent representa-

tives under the new plan is currently overrepresented in the Legislature by a deviation of approximately 100 percent. For each approximately 18,171 people in each of these districts, there currently are two representatives, rather than the one required by the Constitution. A list of these districts is attached hereto as Exhibit 2. The voters in these two-member districts, to whom the representatives are responsible and on whom the current representations must rely for reelection, under the new plan now have twice the political power and influence in the Legislature of districts which have only one resident representative under the new plan.

Each district which has no incumbent representative under the new plan, which also are listed in Exhibit 2 attached, currently has no representation and under the new plan no current political power or influence in the Legislature. The voters in these districts which have no resident legislators are totally unrepresented under the new plan. Hence, special elections are required in these new districts as well.

WHEREFORE, plaintiffs pray that their motion be granted.

Respectfully submitted,

/s/ Frank R. Parker
FRANK R. PARKER

Lawyers' Committee for
Civil Rights Under Law
P.O. Box 1971
Jackson, Mississippi 39205

Attorneys for Plaintiffs

[Certificate of Service Omitted in Printing]

Exhibit 1. NEW HOUSE DISTRICTS IN WHICH SPECIAL ELECTIONS SHOULD BE HELD.

Old District	Description	No. of Reps.	1975 Voting Age Pop.[1] White %	Black %	New District	Description	% Black [2] (1970 Census)	1975 Black [3] VAP Percent
3, 3A, 3B (Floterial)	DeSoto and Marshall	3	69.3%	30.7%	3	Marshall, Beats 1, 2, 3 and 4	67.2%	57.5%
9	Panola and Yalobusha	2	61.1%	38.9%	10	Panola, Beats 1, 2 and 5	53.8%	44.5%
	Coahoma	2	43.4%	56.6%	15	Coahoma precincts	54.7%	46.6%
11A	Quitman and Tunica	1	46.4%	53.6%	16	Coahoma precincts	69.0%	61.8%
11B (Floterial)	Coahoma, Quitman and Tunica	1	44.5%	55.5%	8	Tunica, Beats 1, 2, 3, and 4, Armory; Coahoma precincts	74.0%	65.3%
					17	Quitman; Tunica, Two Mile Lake	58.7%	49.0%
12	Tallahatchie	1	50.0%	50.0%	27	Tallahatchie, Beats 1, 2, 4 and 5, Paynes	62.4%	52.6%
	Sunflower	2	47.0%	53.0%	25	Sunflower, Beats 1 and 3, Moorhead,	66.9%	57.6%
					26	Sunflower, Beat 5, other precincts	58.5%	48.3%
14	Bolivar	3	48.6%	51.4%	22	Bolivar, Beat 1 and other precincts; Sunflower, Boyer-Linn	69.0%	59.6%
					24	Bolivar, Beat 3 and N. Cleveland and Merigold	70.9%	54.5%
15	Issaquena and Washington	4	50.6%	49.4%	32	Issaquena; Washington, Beat 1 and Avon	57.9%	52.1%
					33	Washington, Precincts	55.7%	50.6%
					34	Washington, Beat 3 and New County Garage	56.0%	50.9%

[1] E. Bryant and S. El-Attar, *Population of Mississippi Legislative and Congressional Districts, 1970, and Projections to 1975* (Mississippi State University 1973) (Ex. p.13).

[2] Based on 1970 Census data, estimated for precincts based on census enumeration districts.

[3] Estimates based on Ex. P-13, *supra*.

Old District	Description	No. of Reps.	1975 Voting Age Pop. White %	1975 Voting Age Pop. Black %	New District	Description	% Black (1970 Census)	1975 Black VAP Percent
17	Carroll and Leflore	3	52.7%	47.3%	37	Leflore, Beats 4 and 5	69.1%	61.2%
					38	Carroll; Leflore, two precincts, Attala, Beat 3 (less Possumneck)	51.3%	41.4%
23	Lowndes	2	74.6%	25.4%				
23A	Oktibbeha and Noxubee	2	66.6%	43.4%				
23B	Lowndes, Noxubee, and Oktibbeha	1	71.0%	29.0%	52	Noxubee; Lowndes, Crawford and Artesia	68.0%	59.4%
24	Kemper and Lauderdale	4	72.0%	38.0%	79	Lauderdale, Meridian precincts and East Bonita	56.1%	49.6%
29	Sharkey and Yazoo	2	52.9%	47.1%	47	Sharkey; Humphreys, Beat 5; Yazoo prects.	64.8%	55.3%
					56	Yazoo precincts	50.9%	42.5%
30	Claiborne and Warren	3	58.5%	41.5%	81	Claiborne and Jefferson	74.9%	69.9%
33	Adams	2	56.4%	43.6%	89	Adams, Beats 4 and 5, Somerset	53.0%	48.6%
34	Amite, Franklin, and Wilkinson	2	54.2%	45.8%	97	Wilkinson; Amite, Beats 1, 2, and 3	60.6%	53.3%

EXHIBIT 2. HOUSE MEMBERS PLACED IN THE SAME DISTRICT AND DISTRICTS WITHOUT REPRESENTATION.

New District	House Members	District Without Rep.
6	Irby Benjamin (Reinzi) Jimmy Ray McCalla (Corinth)	4
8	Harry Neblett (Jonestown) Malcolm Mabry (Dublin)	16
10	Wes McIngvale (Battesville) Harry Bryan (Batesville)	11
19	Tommy Brooks (Tupelo) Harold Montgomery (Tupelo)	30
44	Horace Harned (Starkville) Glenn Shumake (Columbus)	52
53	George Rogers (Vicksburg) Donald Cross (Vicksburg)	54
56	Tommy Campbell (Yazoo City) John Sharpe Holmes (Yazoo City)	47
74	Lonnie Johnson (Rankin Co.) Jimmie Morrow (Brandon)	75
83	Bobby Anderson (Wesson) Harold Fortenberry (Monticello)	81
88	Walter Brown (Natchez) Tommy O'Beirne (Natchez)	89
93	Tucker Buchanan (Laurel) Vincent Scoper (Laurel)	95
99	Tommy Walmon (McComb) Ashley Atkinson (McComb)	98
113	Glenn Endris Jerry O'Keefe	115

APPENDIX G

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

Civil Action No. 3830(A)

[Received 7-25-76]

PEGGY J. CONNOR, *et al.*,
Plaintiffs,

v.

CLIFF FINCH, *et al.*,
Defendants,

and

UNITED STATES OF AMERICA,
Plaintiff-Intervenor.

PROPOSAL BY THE UNITED STATES FOR SPECIAL ELECTIONS

In its Order of September 8, 1976, this Court set forth a permanent apportionment plan for the Mississippi State House of Representatives and directed the parties to this litigation:

> ". . . to file a list of the districts for the election of Representatives in which special elections should be held . . . assigning their reasons as to each district individually."

Without necessarily agreeing with all of the districts set forth in the Court's ordered plan, as to which our analysis is continuing and with respect to which we will request leave to file our views concerning the sufficiency of the plan as a permanent plan for the 1979 election,

the United States hereby submits its analysis of the need for special elections under the plan drawn by the Court.

The attached chart sets forth the districts in which we submit special elections are appropriate, indicating the number of the district as set forth in the Court's Order of September 8, 1976, and the corresponding district number under the Temporary Plan ordered July 11, 1975. The criteria set forth below are derived from relevant case authorities and were utilized to determine the districts in which special elections are required. Since our interest arises primarily by virtue of the Voting Rights Act, our criteria are limited to situations involving potential dilution of the black vote or other Fifteenth Amendment considerations. As discussed later in this memorandum the criteria have been modified from those set forth in our memorandum on the Senate plan. As with the Senate plan, we suggest that the Court may wish to consider the need for special elections under Fourteenth Amendment principles for any district in which the constituency—is substantially altered.

Criteria Used:

(1) The Temporary Plan district was a multi-member district and the district under the Permanent Plan has a black voting age population majority or contains a substantial black population if, in the latter instance, the black minority in the resulting single-member district is appreciably larger than the black percentage in the previously existing multi-member district; or,

(2) The district pursuant to the Temporary Plan, although a single-member district was altered and the Permanent Plan district has a black voting age population majority where none existed before.

The application of these criteria results in recommended special elections in 29 house districts. The house districts, and the criteria under which each district falls, are incorporated in the attached chart.

In addition, we would like to take this opportunity to bring to the Court's attention an error in the application to the senate plan criteria set forth in our submission to the Court on September 8, 1976. In that proposal we listed new senate districts 40, 41, 42 and 43 as districts in which special elections should be held. However, our continuing analysis shows that since old district 26 was a single-member district, criteria number 1 in our prior proposal would not apply to new senate district 40 and since new district 40 does not have a majority black voting age population criteria number 2 would not apply. Furthermore, new district 40 is, except for two beats of Walthal County, essentially the same as old district 26.

A somewhat similar situation exists with regard to new senate district 43. Except for one beat and a portion of another (2 precincts), Jones County constitutes new senate district 43 whereas one of the old subdistricts (27(a)), electing its own senator, in previously existing floterial district 27 was made up of Jones County in its entirety. Thus, with a minor variation the new district 43 constituency conforms to that of the old Jones County subdistrict which elected a senator.

For these reasons, application of our criteria 1 and 2 of the previous memorandum would not warrant special elections in either district 40 or 43 of the senate plan. Districts 41 and 42 were included under criteria number 3 only because of their interrelationship with districts 40 and 43. Consequently, we request the Court's permission to withdraw our recommendation for special elections in senate districts 40, 41, 42 and 43. (We note in passing that the significant alteration of the constituency in districts 41 and 42 may raise the kind of Fourteenth Amendment questions alluded to previously as non-dilution type issues appropriate for the Court's consideration.)

Finally, our analysis has occasioned us to re-evaluate the criteria stated in our memorandum on the senate plan. In doing so, we conclude that criteria number 3 in our previous memorandum is not primarily one dealing with Voting Rights Act—Fifteenth Amendment considerations, geared as it is toward the fallout effects of situations which, in our view, do involve such considerations. Accordingly, we have eliminated criteria number 3 from our proposal relating to the house plan. In addition, we have reassessed the senate plan without regard to criteria number 3. As reflected in this memorandum we have also refined criteria number 1 and, and a result, conclude that new senate districts 1 and 2 may also be eliminated from the list of special election districts.

In conclusion, therefore, we offer the attached list of house of representatives districts in which special elections should be held and request that new senate districts 1, 2, 40, 41, 42 and 43 be eliminated from our previously submitted list of senate districts recommended for special elections. As modified, our recommendation is that special elections should be scheduled in 8 senate districts and 29 house districts in the Court's proposed plan.

Respectfully submitted,

GERALD W. JONES
MICHAEL D. JOHNSON
Attorneys
Department of Justice
Washington, D. C. 20530

MISSISSIPPI HOUSE DISTRICTS (COURT ORDER SEPTEMBER 8, 1976) IN WHICH THE UNITED STATES RECOMMENDS SPECIAL ELECTIONS

PERMANENT PLAN			TEMPORARY PLAN			
Dist. #	Blk. Pop. %	Blk.[1] VAP %	Dist. #[2]	Blk. Pop. %	Blk.[1] VAP %	Applicable Criteria
3	67.7	62.0	3(3)	45.9		1
8	74.2	68.2	11(4)	64.2	57.6	1
10	53.5		9(2)	47.9		1
15	57.4	50.8	11(4)	64.2	57.6	1
16	62.1	55.6	11(4)	64.2	57.6	1
17	58.8	51.6	11(4)	64.2	57.6	1
22	70.0	62.0	13(2)	62.8	54.8	1
			14(3)	61.4	53.3	
24	68.9	60.7	14(3)	61.4	53.3	1
25	64.3	56.8	13(2)	62.8	54.8	1
26	60.9	52.3	13(2)	62.8	54.8	1
32	58.1	52.3	15(4)	54.8	49.4	1
33	56.1	50.6	15(4)	54.8	49.4	1
34	55.5		15(4)	54.8	49.4	1
37	68.6	62.8	17(3)	56.6	50.1	1
38	51.4		17(3)	56.6	50.1	1
			19(1)	40.4		
47	64.8	57.4	16(2)	66.8	59.4	1
			29(2)	56.2	49.6	
48	62.6	55.7	16(2)	66.8	59.4	1
49	69.2	60.1	16(2)	66.8	59.4	1
52	67.9	61.33	23(5)	38.4		1
56	50.7		29(2)	56.2	49.6	1
57	66.5	61.1	28(4)	42.0		1
79	55.4	50.00	24(4)	33.9		1
81	74.9	70.5	30(3)	47.0		1
			32(2)	51.1	50.1	
82	52.8		32(2)	57.1	50.1	1
89	54.6	50.7	33(2)	47.9		1
97	60.65	54.2	34(2)	53.4	46.6	1
103	42.7		39(4)	22.1		1
105	40.1		39(4)	22.1		1
115	45.6		45 to 45E(7)	5.4 to 34.3		1

Total special election districts—29

[1] Black VAP not shown where less than 50%

[2] Size of multimember districts shown in parenthesis.

[Certificate of Service Cmitted in Printing]

APPENDIX H

AFFIDAVIT

FRANK R. PARKER, after first being duly sworn, deposes and says as follows:

1. I am counsel for the plaintiffs in *Connor* v. *Finch*, Civil No. 3830(A), S.D. Miss. (three-judge Court).

2. Subsequent to the District Court's Opinion of September 8, 1976, I made inquiries in the office of the Speaker of the Mississippi House of Representatives to determine which new House districts established by the District Court's permanent House plan had two or more incumbent representatives residing in them, and which had none. Upon information and belief, the Speaker's staff had made inquiries of incumbent representatives to determine in which voting precinct, supervisors' district, and new House district each incumbent representative resided.

3. The Speaker's staff provided me with the following information:

A. The following new House districts have two incumbent representatives currently residing in them: New House Districts 6, 8, 10, 19, 44, 53, 56, 74, 83, 88, 93, 99 and 113.

B. The following new House districts have no incumbent representatives currently residing in them: New House Districts 4, 11, 16, 30, 47, 52, 54, 75, 81, 89, 95, 98, and 115.

/s/ Frank R. Parker
FRANK R. PARKER

Sworn to and subscribed before me this 18th day of November, 1976.

/s/ Miss Laverne Holly
Notary Public
My Commission expires August 30, 1978.

Supreme Court, U. S.
FILED
FEB 7 1977
MICHAEL RODAK, JR., CLERK

SUPPLEMENTARY APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

Nos. 76-777, 76-933, 76-934 and 76-935

PEGGY J. CONNOR, ET AL., *Appellants*
and
THE UNITED STATES OF AMERICA, *Intervenor*
v.
CLIFF FINCH, Governor of Mississippi, ET AL.

CLIFF FINCH, Governor of Mississippi, ET AL., *Appellants*
v.
PEGGY J. CONNOR, ET AL., and THE UNITED STATES OF AMERICA

UNITED STATES OF AMERICA, *Appellant*
v.
CLIFF FINCH, Governor of Mississippi, ET AL.

PEGGY J. CONNOR, ET AL., *Appellants*
v.
CLIFF FINCH, Governor of Mississippi, ET AL.

Jurisdictional Statement in 76-777 Docketed December 8, 1976
Jurisdictional Statements in 76-933, 76-934 and 76-935
Docketed January 5, 1977

Probable Jurisdiction in 76-777 Noted December 8, 1976
Probable Jurisdiction in 76-933, 76-934 and 76-935
Noted January 17, 1977

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

TABLE OF CONTENTS

Page

Defendants' Submission Pursuant to Order for Deferment and Motion for Approval of Apportionment of the Mississippi Legislature 1a

Defendants' Amended Submission Pursuant to Order for Deferment and Motion for Approval of Apportionment of the Mississippi Legislature 3a

Plaintiffs' Motion for Continuance 5a

From Transcript of February 7, 1975 Proceedings Before Judges Coleman, Cox, and Russell 8a

Exhibits from Hearing of May 5, 1975 Before Judges Coleman, Cox, and Russell:

Report of Committee on Elections of Mississippi State Senate on Senate Bill No. 2976 ..... 15a

Report of Committee on Apportionment and Elections of Mississippi House of Representatives on House Bill No. 1290 ..... 23a

From Transcript of May 7, 1975 Proceedings Before Judges Coleman, Cox, and Russell 41a

Defendants' Objections to Plaintiffs' Motion for Injunctive Relief and to Enforce the Mandate of the Supreme Court of the United States, and to the Motion of the United States for Preliminary Injunction 44a

From Transcript of June 20, 1975 Proceedings Before Judges Coleman, Cox, and Russell 48a

Defendants' Objections to the June 25, 1975, Court-Ordered Legislative Districts 79a

Page

Defendants' Response to Motion to Alter or Amend Judgement 82a

Defendants' Submission Pursuant to Order 89a

From Transcript of June 15, 1976 Proceedings Before Judges Coleman, Cox, and Russell 95a

Response of Defendants to Plaintiffs' Motion for an Immediate Decision 109a

Defendants' Submission Pursuant to Order 111a

Defendants' Submission Pursuant to Order and Objections to Request for Special Elections 116a

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

CIVIL ACTION No. 3830

PEGGY J. CONNOR, ET AL., *Plaintiffs*

v.

PAUL B. JOHNSON, ET AL., *Defendants*

Submission Pursuant to Order for Deferment and Motion for Approval of Apportionment of the Mississippi Legislature

[FILED FEBRUARY 9, 1973]

Pursuant to Order of this Court dated January 4, 1973, defendants hereby submit and move this Court for approval of the legislative apportionment plan enacted by the Mississippi Legislature in the Regular Session of 1973 as approved by the Governor on February 9, 1973, and for cause would show unto the Court the following, to-wit:

1. That the Mississippi Legislature enacted House Bill No. 446 which apportioned the House of Representatives of said legislature. A copy of said bill is attached hereto as Exhibit I.

2. That said apportionment plan conforms in all respects to this Court's plan of May 18, 1971, with the exception of those most populous districts, i.e. Hinds County (District 31), Harrison County (District 45), and Jackson County (District 46). These districts are apportioned as follows:

A. District 31, being Hinds County, shall have two representatives residents of and elected from each supervisors district. The two remaining representatives shall be residents of any area of the district and shall be elected district-wide.

B. District 45, being Harrison County, shall have one representative resident in and elected from each supervisors district. The two remaining representatives shall

be residents of the district and shall be elected district-wide.

(c) District 46, being Jackson and George Counties, shall have one representative resident in and elected from each supervisors district of Jackson County. The one remaining representative shall be a resident of George County and elected district-wide.

3. That the Mississippi Legislature enacted Senate Bill No. 1701 which apportioned the Senate of said legislature. A copy of said bill is attached hereto as Exhibit II.

4. That said apportionment plan conforms in all respects to this Court's plan of May 18, 1971, except for District 22 (Hinds County). District 22 shall have five (5) senators, each of whom shall be a resident of one of the five supervisors districts. All five senators shall be elected county-wide.

WHEREFORE, Defendants move the Court to accept this submission pursuant to its January 4, 1973 Order for Deferment and to approve the attached apportionment plan, being House Bill No. 446 and Senate Bill No. 1701 of the 1973 Regular Session of the Mississippi Legislature and Exhibits I and II to this motion.

Respectfully submitted,

A. F. SUMMER, ATTORNEY GENERAL
OF THE STATE OF MISSISSIPPI
WILLIAM A. ALLAIN, FIRST ASSISTANT
ATTORNEY GENERAL OF THE STATE OF
MISSISSIPPI
HEBER A. LADNER, JR.
SPECIAL ASSISTANT ATTORNEY GENERAL
OF THE STATE OF MISSISSIPPI

/s/ By: A. F. Summer
A. F. SUMMER
ATTORNEY GENERAL OF THE
STATE OF MISSISSIPPI
P. O. Box 220
Jackson, Mississippi 39205

[CERTIFICATE OF SERVICE OMITTED IN PRINTING]

Amended Submission Pursuant to Order for Deferment and Motion for Approval of Apportionment of the Mississippi Legislature

[TITLE OMITTED IN PRINTING]

[FILED APRIL 12, 1973]

Pursuant to Order of this Court dated January 4, 1973, defendants hereby file an Amended Submission replacing that of February 9, 1973, and move this Court for approval of the legislative apportionment plan enacted by the Mississippi Legislature in the Regular Session of 1973 as approved by the Governor on April 6, 1973, and for cause would show unto the Court the following, to-wit:

1. That the Mississippi Legislature enacted House Bill No. 1389 which apportioned the House of Representatives of said Legislature. A copy of said bill is attached hereto as Exhibit I.

2. That said apportionment plan conforms in all respects to this Court's plan of May 18, 1971. Those three districts, namely, Hinds, Harrison, and Jackson Counties, referred to the Legislature for revision by the Order for Deferment are now apportioned as follows:

A. District 31, being Hinds County, shall have twelve representatives designated as Posts 1-12 who shall be elected district wide.

B. District 45, being Harrison County, shall have seven representatives designated as Posts 1-7 who shall be elected district wide.

C. District 46, being Jackson and George Counties, shall have six representatives designated as Posts 1-6 who shall be elected district wide.

3. That the Mississippi Legislature enacted Senate Bill No. 2452 which apportioned the Senate of said Legislature. A copy of said bill is attached hereto as Exhibit II.

4. That said apportionment plan conforms in all respects to this Court's plan of May 18, 1971. That district, being District 22, covered by this Court's Order for Deferment is now composed of five senators chosen district wide and elected by posts.

WHEREFORE, defendants move the Court to accept this Amended Submission pursuant to its January 4, 1973 Order for Deferment and to approve the attached apportionment plan, being House Bill No. 1389 and Senate Bill No. 2452 of the 1973 Regular Session of the Mississippi Legislature and Exhibits I and II to this Motion.

Respectfully submitted,

A. F. SUMMER
ATTORNEY GENERAL
OF THE STATE OF MISSISSIPPI

WILLIAM A. ALLAIN
FIRST ASSISTANT ATTORNEY GENERAL
OF THE STATE OF MISSISSIPPI

[CERTIFICATE OF SERVICE OMITTED IN PRINTING]

Motion for Continuance

[TITLE OMITTED IN PRINTING]

[FILED APRIL 17, 1973]

Plaintiffs, by their attorneys, move the Court for a continuance for two months of the hearing in the above-styled action set for April 20, 1973, on the following grounds:

1. All preparation for the hearing on April 20, 1973, has proceeded on the assumption that the issue at the hearing would be the constitutionality of House Bill 446 and Senate Bill 1701, previously filed with the Court and served on counsel for the plaintiffs on or about February 10, 1973. Counsel for the defendants now have filed an amended submission consisting of House Bill 1389 and Senate Bill 2452 "replacing that of February 9, 1973" (Amended Submission, p. 1), served on counsel for the plaintiffs on April 11, 1973. These new bills came somewhat as a surprise. They were introduced in the Mississippi House of Representatives and Senate well after the deadlines for filing of new legislation, and were rapidly passed by both houses in late March, near the end of the session. They were not signed into law by the Governor until April 6, 1973 (Amended Submission, p. 1). The effect of House Bill 1389 and Senate Bill 2452 is to repeal and supersede the previous reapportionment legislation submitted to the Court, viz., House Bill 446 and Senate Bill 1701. The bills which are now before the Court raise issues which are different from the issues raised in the previous submission, and therefore require different preparation and the development of different litigation planning on the part of counsel for the plaintiffs. The February submission raised the issues of subdistricts within Hinds, Harrison, and Jackson counties, and of floterial districts affecting those counties; the

amended submission of April 11, 1973, now raises issues of multi-member, at-large districts affecting those counties, which were not contained in the February submission. Counsel for the plaintiffs therefore need additional time to prepare and file objections to House Bill 1389 and Senate Bill 2452 (the normal procedure within the Southern District is to permit 30 days for the filing of objections), to frame the issues presented by this new legislation, and to prepare for trial on the issues presented by the new submission.

2. The Mississippi Legislature has now convened and adjourned without finally enacting reapportionment legislation providing for single-member districts in Hinds, Harrison, and Jackson Counties, which this Court determined should be done in its opinion of May 18, 1971, 330 F. Supp. 506, 519, and which determination was endorsed by the United States Supreme Court twice, 402 U.S. 690 (1971), 409 U.S. 549 (1972). We are requesting this continuance to give us additional time to present to the Court, or to a Special Master, plans which provide for single-member districts in Hinds, Harrison, and Jackson Counties and which are feasible and workable. In addition, we believe that the span of 62.96 percentage points of variance for the House (caused by the use of floterial districts) and 20.26 percentage points of variance for the Senate (again, caused by using floterial districts) in House Bill 1389 and Senate Bill 2452 can be eliminated, and the racially discriminatory effects of the frequent use of multi-member districts in those bills deleted, through single-member districts throughout the State, and we need additional time for the development of such a plan for both houses.

3. Counsel for the plaintiffs have been in contact with and have contracted with an expert and professional person, Dr. David Valinsky, for the preparation of reapportionment plans providing for single-member districts in

the House and Senate. Dr. Valinsky prepared the single-member reapportionment plan which was accepted by the three-judge district court in *Sims* v. *Amos,* 336 F. Supp. 924 (M.D.Ala. 1972), and *affirmed per curiam* by the United States Supreme Court *sub nom. Baxley* v. *Sims,* 41 U.S.L.W. 3229 (Oct. 10, 1972, Ho. 72-147). Dr. Valinsky has ordered Census data and has estimated that such a plan for Mississippi can be prepared in two months. Hence, plaintiffs are requesting a two month continuance to develop such a plan and to be in a position to show the Court that such a plan would be superior to the latest submission, both as to providing greater equality of population among the districts and to eliminating the racially discriminatory effects of the Legislature's plan, and would be feasible and workable.

4. No harm can come to the defendants from the granting of the continuance. The 1971 legislative elections were conducted under the interim plan order by the Court on May 18, 1971, and on appeal the Supreme Court refused to disturb those elections. The next regular legislative elections do not come until the spring of 1975. Thus, there is sufficient time to allow a continuance of two months, try the case, permit a decision, and to permit any appeals from any decision before the next legislative elections are to be held.

[Certificate of Service Omitted in Printing]

[From Transcript of February 7, 1975 Proceedings]

[TITLE OMITTED IN PRINTING]

[5] [By Judge Coleman] unique features. Then they concluded down at the last, we hold today that unless there are persuasive justifications a Court ordered reapportionment plan of a state legislature must avoid the use of multi-member districts, and as well must ordinarily achieve the goal of population equality with little more than deminimus variation. Now I don't think there is anything so complex or abstruse about that that anybody could fail to understand it. It says that if it is left for this Court to act or for any other Federal Court to act we must avoid the use of multi-member districts and we must hold population equality to little more than deminimus variation where important and significant state considerations rationally mandate departure from these standards it is the reapportioning court's responsibility to articulate precisely why a plan of single member districts with minimal population variance cannot be adopted, and they say again that just exactly what we have said way back years ago in Conner V. Johnson, we say once again what has been said on many occasions, reapportionment is primarily the duty and responsibility of the state through its legislature or other body rather than a Federal Court. That in Mayhan V. Howell, the Virginia case, the Supreme Court set down some various

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[16] [By Mr. Parker] the Chairman of the Senate Rules Committee which happens to be the Lieutenant Governor. Secondly, we have deposition and proof showing that there are literally hundreds of alternatives even using the criteria employed by the legislature of maintaining county lines intact, there are literally hundreds of alternatives that will provide greater equality of population.

BY JUDGE COLEMAN:

Let me ask you if you are contending, for the benefit of the record, that we should break county lines and something that has never been done in all of the history of Mississippi and which under the language of, I think, or spirit of Chatman V. Myer is not required? Are you all seeking to have us break county lines?

BY MR. PARKER:

Yes, Your Honor, that is our plan. We have two proposed statewide single member districts plans which do provide for breaking of county lines that are modeled after the plan that was approved by the Supreme Court in Alabama under Kenneth versus Amos, and that is the relief that we are requesting the Court to order at this time.

BY JUDGE COLEMAN:

• • • • • • • • • •

[27] [By Judge Coleman] Myer the Supreme Court of the United States is sending word to all legislatures that they want the Federal Courts out of this business of reapportioning the legislature and they want the legislature to perform the function which primarily belongs to them, and if the legislature does not do it acceptably and in a constitutional fashion then they are going to be put in a straight-jacket, to-wit: there will be single member districts, they have got to be of substantially equal population, although there are all other kind of elasticities that they can avail themselves of if they act on their own under Mayhan V. Howell and these other decisions which the Supreme Court has handed down.

BY MR. SUMMER:

Yes, sir.

BY JUDGE COLEMAN:

I don't think there's any necessity under Mayhan V. Howell to cross the county line in a legislative reappor-

tioning case, although I realize Mr. Parker contends to the contrary and the Supreme Court might ultimately say so, but the Supreme Court has never said so except by affirming plans that aren't already been adopted by somebody else.

By Mr. Summer:

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[113] Q. [By Mr. Parker] Did you check that? A. [By Dr. Velinsky] That has been verified.

Q. Do you know whether or not it's consistent with Mississippi population and economic growth conditions? A. Fairly recently I received a document which was rather interesting.

By Judge Coleman:

I must say to you, counsel, if I had known we were going to get into all this on a conditional admission I never would have permitted the Doctor to testify. This is just not helping us at all to come to grips with the chief issue which is whether or not the present reapportionment of the legislature is enacted by that legislature, is legal and constitutional. I realize he has no option except but to answer your questions, but let's please sort of stick to the issue before the Court, please, sir.

By Mr. Parker:

Your Honor, I think the point of the testimony is that it is feasible to draw a plan in Mississippi with a variance of 5.39 for the House and 3.39 for the Senate.

By Judge Coleman:

Well there is no doubt that it is if you are willing to fracture state lines, I mean county lines, which [114] is something that has never been done in the history of the state, and as you very correctly remarked at the outset of these proceedings we have had districts within counties, but there has never been an instance in the one hundred and, since 1817, in which county lines were broken for legislative and senatorial districts. Now the Supreme

Court of the United States told a three judge District Court in North Dakota you can't foist a policy on North Dakota of requiring them to have multi-member districts when their policy has always been to have single. By analogy I don't think this Court has the authority to foist upon the people of Mississippi senatorial and representative districts fracturing the county lines in violation of the undisputed, unchallenged tradition and policy of the state for over a hundred years, yet the plan which you have had the doctor to fix up here would do just exactly that.

By Mr. Parker:

Let me, in response to that, Your Honor, let me make one point for the Court's consideration. It seems to me that using counties as a basis for legislative districts in the state policy of countywide voting for the legislature would be unconstitutional and could not be adopted or followed by the court in one situation,

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[148] [By Judge Coleman] admitted? It has been admitted, Mr. Parker, so there is no question about that.

By Mr. Parker:

Thank you, Your Honor.

By Judge Coleman:

What do you propose to examine him about?

By Mr. Summer:

We propose to examine him about the studies that the legislature made and which he was involved in and how they came about making a report.

By Judge Coleman:

You may proceed.

DIRECT EXAMINATION

BY MR. SUMMER:

Q. Mr. Barefield, I would like to hand you this instrument and ask you to identify it, if you will, please, sir.

BY MR. PARKER:

Could I see it first, please?

(Document handed to counsel for plaintiffs.)

BY MR. PARKER:

That's not an original certification. Your Honor, these appear to be one, two, three pages of the House Journal, House of Representatives of the State Legislature. I believe the Court will take judicial notice of entries in the House Journal.

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[150] [By Mr. Summer] come up with a reapportionment plan? A. [By Mr. Barefield] Yes, sir, the 1972 session of the legislature authorized the creation of an interim study committee to study the problems involved in reapportionment, which we did, and held that study during the summer and fall of 1972 and reported to the legislature, I believe, in January of 1973.

Q. Were you a member of that committee? A. Member of that committee and Chairman of that committee.

Q. Did you attend most or all of the sessions? A. I attended all of the sessions, yes, sir.

Q. All of the sessions, so you were present during the entire proceeding? A. Yes, sir.

BY MR. SUMMER:

I believe that there has already been introduced, if the Court please, a copy of this legislative report, and I'm not sure.

BY JUDGE COLEMAN:

You may reintroduce it as a defendant's exhibit if you wish and that will settle that.

BY MR. SUMMER:

I think with permission to reintroduce the copy. We do not have the original. We do have the original.

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[153] [By Judge Coleman] allowed to file any objection thereto after the filing if he so advise.

BY MR. SUMMER:

Thank you, sir.

Q. Now, Mr. Barefield, if you will just proceed to tell the Court what this legislative committee did and how you all came to do what you did? A. Well, the Interim Study Committee Report was created by the '72 legislature, as I said, following a decision of this Court after the case came back from the United States Supreme Court, I think it was obvious that the Mississippi Legislature had to address itself to the question of legislative reapportionment. We did so. That committee met on numerous occasions. It had witnesses of various sorts, attorney general's staff, Mr. Bill Neal, Mr. George Peachtaylor, other interested parties, it used the computer processes of the State Government to run out population figures, to establish certain guidelines which guided the committee and how they would go about and what their goals were, guidelines set out beginning on Page 5 of the report. Those guidelines were followed by the committee throughout the process. My recollection is that notwithstanding all that work when we got down to an actual vote the committee when it, with reference

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[155] [By Mr. Barefield] that fashion, all of this being done in response to an order of this Court, I believe dated

sometime in the early part of January of '73 to report by February 10th, I believe, the Governor actually signed 446 on February 9th.

BY JUDGE COLEMAN:

As I recall it, we entered an Order saying if the legislature did not act within a certain time then we would proceed to act.

BY THE WITNESS [Mr. Barefield]:

Yes, sir, that is my recollection. At that point I think we all thought our problems were over. As I remember probably some four or six weeks later the Supreme Court handed down the Mayhan case and that just created the disturbance all over again, because then the reaction in the legislature was to the point that perhaps the 446 went further than the legislature was required to go, because the Mayhan case spoke to political lines, county lines, boundary lines and this sort of thing, and at that point new legislation was introduced and I forget the number of the final bill that was passed and the one before the Court today, was finally passed through the House and the Senate going back and permitting representatives in Hinds County to run county at large, Hinds, Harrison and

. . . . . .

Report of Committee on Elections of Mississippi State Senate on Senate Bill No. 2976
[Exhibit from Hearing of May 5, 1975]

The Committee on Elections of the Mississippi State Senate recognizes and accepts that legislative reapportionment is primarily the duty and responsibility of the Mississippi Legislature. The committee, therefore, has reported Senate Bill 2976 and additionally submits this report in an attempt to discharge such duty and responsibility according to the Constitution of the United States as enunciated in the most recent decisions of the Supreme Court applicable to reapportionment of state legislatures.

The committee has studied decisions of the United States Supreme Court, including the landmark ruling in *Reynolds* v. *Sims*, 377 U.S. 533 (1964), and the more recent decisions in *Whitcomb* v. *Chavis*, 403 U.S. 124 (1971), *Mahon* v. *Howell*, 410 U.S. 315 (1973), and *Chapman* v. *Meier* (1975). The committee has also studied the line of decisions styled *Connor* v. *Johnson* and *Connor* v. *Williams* which embody the decisions of the United States District Court and the United States Supreme Court on the matter of reapportionment of the Mississippi Legislature. In addition, the committee has reviewed the proposals for reapportionment submitted by Mayor Charles Evers and the proposal submited to the United States District Court by the plaintiffs in *Connor* v. *Waller* as well as other methods advanced or used for accomplishing such reapportionment.

The committee, in its earliest deliberations, considering the manner in which counties are structured and governed in Mississippi and the need to quite frequently pass legislation dealing only with particular counties, determined that the policy of maintaining the integrity of county lines in establishing legislative districts should be continued.

It might be pointed out that county lines have remained unchanged with only a few exceptions since 1890, and that the Legislature and courts, since the Constitution of 1890,

have recognized the integrity of county lines in establishing legislative districts. Mayor Charles Evers of Fayette, Mississippi, appearing before the Senate Elections Committee as the leader of a delegation concerned with the reapportionment, likewise concurred that the integrity of county lines should be maintained. The committee, desiring to respect county lines, nevertheless is aware and recognizes that it is under a constitutional duty to "make an honest and good faith effort to construct legislative districts in both Houses of its Legislature as nearly equal in population as is practicable," *Mahon* v. *Howell,* supra. This we have done our very best to do. We have also sought to reduce multi-member districts as much as possible, still giving effect to the one-person, one-vote requirement of the United States Constitution, and attempted to continue the policy of this state to maintain the integrity of political subdivision lines in the reapportionment of legislative seats. We have sought to produce a minimum deviation above and below the norm, keeping political boundaries intact.

House Bill 1290, 1975 Regular Session, which reapportions the House of Representatives deviates from the policy of putting an entire county in a legislative district in order to avoid a multi-member House district of twelve (12) members in Hinds County. Even in this instance, the integrity of the county line was maintained, and the Representatives were required to be residents of and elected by supervisors' beats, the beat being a political subdivision of the county.

The committee recognizes, pursuant to the decision in *Mahon* v. *Howell,* supra, that the state may utilize different criteria for determining the method of apportioning seats in the Senate and House and still comply with constitutional requirements. Since the county is such a basic unit of government in Mississippi, and since so much legislation is passed by the Legislature which directly affects the individual county as a whole and so much legislation is passed

which directly affects each and every county in the state as a whole, and since very seldom is legislation passed affecting only parts of a county, and since 10 of the 12 Representatives from Hinds County are to be elected by beats and only 2 Representatives from Hinds County are to be elected at large, the committee has determined that the 5 Senators from Hinds County should be elected at large. To require that the Senators from Hinds County be elected by and from beats of the county would mean that not a single Senator from Hinds County would be elected to represent Hinds County as a whole. The United States Supreme Court in *Mahon* v. *Howell,* supra approved two five-member senatorial districts established by the Legislature in Virginia. It is the sense of this committee that, in the event Hinds County should ever elect more than 5 Senators, a different policy should prevail.

Although not a predominant reason for the present reapportionment proposed in Senate Bill 2796, the committee would point out that the proposal results in as little change as possible from present legislative districts and yet complies with the state policy of maintaining the integrity of political subdivision lines and the requirements of the United States Constitution. The committee believes this fact to be beneficial. By changing districts only when necessary to carry out such state policy and to comply with constitutional provisions, the voters of a district are not confused by frequent changes of districts and have a better opportunity of evaluating whether or not a legislator has done a good job and should be returned, or that he has done a poor job and should be retired. Hopefully this factor will result in better, more responsible, representative government in Mississippi.

This committee recognizes that legislative reapportionment should again be accomplished immediately after the 1980 census unless necessitated by changing facts prior to such time in order to comply with constitutional mandates.

In attempting to achieve compliance with the one-person, one-vote requirement, this committee was confronted with the utter impossibility of arriving at mathematical exactness and still maintaining the integrity of political subdivision lines. According to the interpretation of the provisions of the Constitution by the United States Supreme Court, we are advised and are aware that state legislative districts must be as nearly equal as practicable though mathematical exactness is not required, and this we have attempted to achieve.

The committee heard testimony from Mayor Charles Evers regarding reapportionment. In addition, the committee studied a plan for reapportionment which he submitted in behalf of himself and his delegation. The committee determined that Mayor Evers' proposed Senate apportionment was unacceptable because of the large deviations from the norm and because of the very high total variance.

The proposal created District 27 composed of Neshoba, Newton and Jasper Counties having a total population of 55,779. This district was allocated one (1) Senator, thereby having a population of 13,145 or 30.8% above the norm of 42,634 for one (1) Senator. Other large deviations above the norm include 25% for District 32 composed of Hancock, Pearl River and Stone Counties, 17.9% for District 38 composed of Lincoln, Lawrence and Jefferson Davis Counties, and 15.9% for District 18 composed of Bolivar County.

Mayor Evers' proposal created District 13 composed of Clay and Chickasaw Counties having a total population of 35,651. This district was allocated one (1) Senator, thereby having a population of 6,983 or 16.4% below the norm of 42,634 for one (1) Senator. Other large deviations below the norm include 15.8% for District 1 composed of DeSoto County, 15% for District 23 composed of Sharkey and Yazoo Counties, and 14% for District 20 composed of Washington and Issaquena Counties.

The maximum positive deviation of 30.8% and the maximum negative deviation of 16.4% yield a variance of 47.2% from the negative to the positive. In view of the decisions of the United States District Court styled *Connor* v. *Johnson* and *Connor* v. *Williams*, the committee feels that Mayor Evers' proposal will not meet the criteria of that court. Further, the committee feels that the total variance of 47.2% is not acceptable under decisions of the United States Supreme Court which has rejected proposals having a total variance of much less than 47.2%.

The committee also considered a proposal for reapportionment which was presented to the United States District Court by the plaintiffs in the action currently pending before that court styled *Connor* v. *Waller*.

This proposal admittedly achieves a greater mathematical exactness than does the proposal reported by the committee in Senate Bill 2976, but the committee feels that the final product of the plaintiff's proposal is impracticable and unworkable. In the plaintiffs proposal, the maximum deviation above the norm is 1.66% found in District 18 composed of Clay County and part of Oktibbeha County. The maximum deviation below the norm is 1.73% found in District 52 composed of a part of Jackson County. The total variance therefore is only 3.39% from the maximum negative deviation of 1.73% to the maximum positive deviation of 1.66% a figure which the committee would be pleased to approve if the apportionment structure which yields that low variance were otherwise practicable.

The plaintiffs proposal initiates a new reapportionment procedure for Mississippi—the division of counties and even of beats within counties for the purpose of establishing legislative districts. A review of the plaintiff's proposal indicates that 40 of the 52 districts or 77% of the districts created by the plaintiffs cross county lines and that 46, or 89%, of the new districts cross supervisor's beat lines within the county in creating the districts. Only 4 proposed

districts, Districts 1, 12, 21 and 22 are composed of counties which are not divided or are composed of a subdivision of a county.

The plaintiff's proposal utilizes census enumeration districts as the basic unit for determining the population of a legislative district. Voters in the district would therefore have to vote in new precincts based upon enumeration districts. In essence, the Legislature by adopting a proposal based upon these enumeration districts would, of necessity, be establishing or creating voting precincts. This prerogative or power is a traditional function of local government and not the legislature, and the committee feels that to adopt a plan based upon enumeration districts would be an abridgment and abrogation of that traditional function.

Further, an apportionment structure based upon enumeration districts which are subject to change with each new census would require a contemporaneous change in voting precincts. The committee feels that to use enumeration districts would result in chaos at the polls, perhaps even in a re-registration of voters by virtue of the creation, division and change of voting precincts, a power which previously in this report has been recognized as a function of local government. The committee feels that the use of enumeration districts would impose unwarrented hardship on voters and election officials in Mississippi.

From its admission into the Union in 1817, Mississippi has structured Senate districts along county lines. There have been no exceptions. No Senate district has ever been created by combining parts of one (1) county with portions of another because the county is the basic, traditional governmental unit upon which the state is organized and through which such primary functions as courts, taxation and elections are and have been conducted.

The plaintiff's proposal was not approved by the committee because the committee did not want to abrogate the

historical state policy of creating Senate districts coinciding with county lines, because the committee did not want to abridge the traditional power of local government to establish voting precincts and because the committee did not want to create unnecessary confusion and impose an unwarranted hardship upon voters and election officials by structuring voting precincts on enumeration districts which are subject to frequent change.

In the proposed reapportionment embodied in Senate Bill 2976 the committee allocated legislative seats to specific counties when the population of the county was sufficient to entitle the county to seat by itself. The following districts are single-county, single-member districts with a population of approximately 42,000 and which are so situated geographically and so near the norm that the combination with another county is not necessary:

DISTRICT	POPULATION		NUMBER OF SENATORS
District 5 Lee County	46,148	+8.2%	1
District 10 Coahoma County	40,447	−5.1%	1
District 13 Leflore County	42,111	−1.2%	1
District 21 Rankin County	43,933	+3.0%	1
District 23 Warren County	44,981	+5.5%	1

The following districts are single-county districts which have populations equivalent to multiples of the norm for one (1) Senator and are so situated geographically that the combination with another county is not necessary:

DISTRICT	POPULATION		NUMBER OF SENATORS
District 22 Hinds County	214,973	+0.84%	5
District 32 Harrison County	134,582	+5.2%	3
District 33 Jackson County	87,975	+3.2%	2

The committee approved a residence requirement in District 27 composed of Covington, Jefferson Davis, Lawrence, Marion and Jones Counties as follows: Post 1 to be a resident of and elected by Jones County, Post 2 to be a resident of and elected by the remaining counties, and Post 3 to be a resident of any county and elected by all counties. The residence requirements were imposed because Jones County has more than sufficient population to entitle it to one (1) Senator. The remaining counties have more than sufficient population to entitle them to one (1) Senator. The entire district has sufficient population to entitle it to a third Senator.

The remaining districts are composed of more than one (1) county, and elect one (1) or more Senators without restrictions as to residence.

The above apportionment plan for the Senate has an average percentage variance of 6.12% with the average deviation above the norm being 6.45% and the average deviation below the norm being 5.63%. No district varies from the norm by as much as 10%, and sixteen of thirty-three districts vary by less than 5%.

Report of Committee on Apportionment and Elections on House Bill No. 1290
[Exhibit from Hearing of May 5, 1975]

The Apportionment and Elections Committee of the House of Representatives recognizes its primary responsibility, as recently emphasized by the Supreme Court of the United States in *Chapman* v. *Meier* (January 27, 1975) to effectuate legislative reapportionment in compliance with the requirements of the federal Constitution. The most recent guidelines for the reapportionment of state legislatures in compliance with the one-person, one-vote requirement of the federal Constitution have been enunciated by the Supreme Court of the United States in *Mahan* v. *Howell,* 410 U.S. 315 (1973) and in prior decisions. In *Mahan,* it was held that in reapportionment a state may pursue the rational objective of preserving the integrity of its political subdivision lines.

From the attainment of statehood in 1817, Mississippi has structured the apportionment of its Legislature on county lines. There have been only a few instances of the election of Representatives from a judicial district situated solely within a county. No district has ever been established by combining parts of one county with portions of others because the county is the basic, traditional governmental unit upon which the State is organized and through which such primary functions as courts, elections and taxation have been conducted.

The 1970 official census figures for the State of Mississippi reflects a population of 2,216,912. Section 254, Mississippi Constitution, provides for a membership in the House of Representatives of not more than one hundred twenty-two (122) members. The norm for one Representative in a 122-seat chamber is 18,171 people per Representative. Mississippi is composed of eight-two (82) counties. These counties constitute the political subdivisions from which the

people first exercise their political power through the election of local officials. Each county is divided into five (5) beats or districts which are the units of county government. The committee felt that it should adhere to county lines as the best, fairest and most effective method delineating districts for the election of the members of the House of Representatives of the State of Mississippi. To do otherwise would result in chaos at the polls, perhaps resulting in many cases of reregistration of voters, and the creation and division of voting precincts, none of which the State Legislature, under existing State statutes, has the authority to determine, such powers resting with local boards of supervisors within each county.

The committee allocated legislative seats to specific counties when the population of those counties was sufficient to entitle that county to one or more legislative seats by itself. The following districts are single-county districts with populations of approximately 18,000 and which are so situated geographically that the combination with another county is not necessary; therefore, each is allocated one legislative seat.

District	Population	Number of Representatives
District 5 Chickasaw County	16,805	1
District 6 Pontotoc County	17,363	1
District 7 Union County	19,096	1
District 10 Tate County	18,544	1
District 12 Tallahatchie County	19,338	1

District 19 Attala County	19,570	1
District 20 Winston County	18,406	1
District 22 Clay County	18,840	1
District 36 Simpson County	19,947	1
District 41 Wayne County	16,650	1
District 44 Hancock County	17,387	1

The following districts are single-county districts which have populations equivalent to multiples of the norm for the State and are so situated geographically that the combination with another county is not necessary. (Hinds and Harrison Counties are treated separately hereafter.)

District	Population	Number of Representatives
District 13 Sunflower County	37,047	2
District 14 Bolivar County	49,409	3
District 33 Adams County	37,293	2
District 40 Jones County	56,357	3

In the following districts the designated county in each listed district has at least 33⅓% more than enough population to elect a Representative in its own right in compliance with the State norm; therefore, the committee estab-

lished requirements of residing in the following designated counties, with the election to be held district wide:

District 8 (2 Representatives)

Lafayette County (24,181)
Calhoun County (14,623)
Only residents of Lafayette County shall qualify as candidates for Post 1.

District 9 (2 Representatives)

Panola County (26,829)
Yalobusha County (11,915)

Only residents of Panola County shall qualify as candidates for Post 1.

District 29 (2 Representatives)

Yazoo County (27,304)
Sharkey County (8,937)

Only residents of Yazoo County shall qualify as candidates for Post 1.

District 32 (2 Representatives)

Copiah County (24,749)
Jefferson County (9,295)

Only residents of Copiah County shall qualify as candidates for Post 1.

District 43 (2 Representatives)

Pearl River County (27,802)
Stone County (8,101)

Only residents of Pearl River County shall qualify as candidates for Post 1.

The committee established residency requirements in the following districts for the reasons enumerated:

District 1 (3 Representatives)

Alcorn County with a population of 27,179 has more than enough population to meet the norm for one legislative seat. Benton and Tippah Counties with a combined population of 23,357 have more than enough population to meet the norm for one seat. The surplus population is enough for a third seat; therefore, Alcorn shall elect one Representative, Post No. 1; Benton and Tippah Counties shall elect one Representative, Post No. 2; and Post No. 3 shall be elected from the district at-large.

District 4 (5 Representatives)

Lee County (46,148)
Monroe County (34,043)
Itawamba County (16,847)

Lee County has 26% more population than required for two legislative seats. Monroe County lacks 7% having enough population for two legislative seats. Itawamba County lacks 8% of enough population for one seat. Therefore, Lee County shall elect two representatives, Posts 1 and 2; Monroe County shall elect one Representative, Post 3; Itawamba County shall elect one Representative, Post 4; and one Representative, Post 5, shall be elected from the district at-large.

District 11 (4 Representatives)

Coahoma County (40,447)
Quitman County (15,888)
Tunica County (11,854)

Coahoma County has more than enough population to meet the norm for two seats. Quitman and Tunica Counties have more than enough population for one seat. The sur-

plus is enough for a fourth seat. Therefore, Coahoma County shall elect two Representatives, Posts 1 and 2; the counties of Quitman and Tunica shall elect one Representative, Post 3; and one Representative, Post 4, shall be elected by the district at-large.

District 23 (5 Representatives)

Lowndes County (49,700)
Noxubee County (14,288)
Oktibbeha County (28,752)

To comply with the State norm as indicated for Districts 4 and 11, Lowndes County is allocated two Representatives, Posts 1 and 2. Noxubee and Oktibbeha Counties shall elect two Representatives designated Posts 3 and 4, with the candidates qualifying for Post 3 being residents of Oktibbeha County; and one Representative, Post 5, shall be elected from the district at-large.

District 24 (4 Representatives)

Kemper County (10,233)
Lauderdale County (67,087)

Kemper County had two Representatives from 1890 until 1964. Kemper County has only 43% of the norm for a Representative and is located on the Alabama line. If combined with Neshoba County, the district would be 14% below the norm; therefore, Kemper County must be combined with Lauderdale County, which has nearly seven times as much population. So as not to disfranchise the voters of Kemper County, all the candidates for Representative residing in Kemper County shall qualify for Post No. 4. The election shall be from the district at-large.

District 25 (3 Representatives)

Newton County (18,983)
Clarke County (15,049)
Jasper County (15,994)

Newton County has enough population to meet the norm for one seat. Clarke and Jasper Counties have enough population for one seat. The excess population warrants a third Representative; therefore, Newton County shall elect one Representative, Post No. 1; Clarke and Jasper Counties shall elect one Representative, Post No. 2; and one Representative shall be elected from the district at-large, Post No. 3.

District 26 (2 Representatives)

Leake County (17,085)
Neshoba County (20,802)

Leake County has a population of 6.5% under the required norm and Neshoba County has a population of 14.5% in excess of the norm; therefore, the Representatives are to be elected district wide with only residents of Neshoba County qualifying for Post 1 and only residents of Leake County qualifying for Post 2.

District 28 (4 Representatives)

Madison County (29,737)
Rankin County (43,933)

Madison County shall elect one Representative designated Post 1; Rankin County is allocated two Representatives, Posts 2 and 3; the excess population warrants a fourth Representative which shall be designated as Post 4 and shall be elected district wide.

District 35 (3 Representatives)

Pike County (31,756)
Lincoln County (26,198)

Pike County should be allocated one Representative, Post 1; Lincoln County should be allocated one Representative designated Post 2; the excess population warrants a third Representative, Post 3, which shall be elected district wide.

Based upon the finding and reasons hereafter set forth, the committee determined that the following districts should elect their respective Representatives by at-large elections without imposing residency requirements for specific posts.

District 2 (2 Representatives)

Tishomingo County with a population of 14,940 is combined with Prentiss County with a population of 20,133. The district has a population which warrants two seats. Tishomingo County's population is 17.8% below the norm for one legislative seat while Prentiss County has a population of 10.8% above the norm, and exceeds the population of Tishomingo by only 5,193; therefore, the voters of Tishomingo could not be substantially overpowered by the voters of Prentiss so as to warrant a residency requirement for Tishomingo County, and Prentiss being only 10.8% above the norm and exceeding the population of Tishomingo County by only 5,193 does not warrant a residing requirement therefore the two Representatives should reside anywhere within the district and be elected at-large.

District 3 (3 Representatives)

Marshall County with a population of 24,027 is combined with DeSoto County with a population of 35,885. Both counties have individual populations in excess of the norm. In that the population of each is substantially above the norm and differs by only 11,758 the three Representatives shall be elected from the district and shall reside anywhere within the district.

District 15 (4 Representatives)

Issaquena with 2,737 is combined with Washington with 70,581. Issaquena has a population 84.9% below the norm and does not justify a residency requirement being imposed

for that county; therefore, the four Representatives shall reside in and be elected from the district at-large.

District 16 (2 Representatives)

Humphreys County with a population of 14,601 is combined with Holmes County with a population of 23,120. The district has a populaton which warrants two seats. Humphreys County is 19.6% below the norm for one seat while Holmes County has a population 27.2% above the norm for one seat, and exceeds the population of Humphreys County by only 8,519; therefore, the voters of Humphreys County could not be so substantially overpowered by the voters of Holmes County so as to justify a residency for Humphreys. In that Holmes has a population of only 8,519 more than Humphreys and less than ⅓ in excess of the norm for one seat, the two Representatives shall reside anywhere in the district and be elected district at-large.

District 17 (3 Representatives)

Carroll County with a population of 9,397 is combined with Leflore County with a population of 42,111. Carroll's population is 48.3% below the norm while Leflore County has more than is required for two seats. Carroll being 48.3% below the norm for one seat does not justify a residency in that county but so as not to disfranchise the electorate of Carroll County no residency requirements should be imposed in favor of Leflore County; therefore, the three Representatives to be elected from this district shall reside anywhere in the district and be elected by the district at-large.

District 18 (2 Representatives)

In compliance with the norms and variances set forth for Districts 2 and 16, Grenada with a population of 19,584 and Montgomery with a population of 12,918, shall elect two Representatives district wide with residency anywhere in the district.

District 21 (1 Representative)

Choctaw with a population of 8,440 is combined with Webster with a population of 10,047. The combined district population is approximately equivalent to the state norm for one Representative. A residency requirement in a specific county is not justified in that the population of each county is by itself substantially below the norm for the state and the populations of the two counties vary by only 1,607.

District 27 (2 Representatives)

In compliance with the norms and variances set forth for districts 2, 16 and 18, Scott with a population of 21,369 or 17.6% above the norm for one seat, is combined with Smith with 13,561 or 25.4% below the norm for one seat and there being a variance in population of only 7,808, the two Representatives shall reside anywhere in the district and be elected from the district at-large.

District 30 (3 Representatives)

Claiborne County with a population of 10,086 is combined with Warren County with a population of 44,981. Claiborne's population is 44.5% below the norm. Warren County has 8,639 more than the number required for two seats. Claiborne being 44.5% below the norm for one seat does not justify a residency in that county but so as not to disfranchise the voters of Claiborne no residency requirements should be imposed in favor of Warren; therefore, the three Representatives shall reside anywhere in the district and be elected district at-large.

District 34 (2 Representatives)

Amite with a population of 13,763 is combined with Franklin with 8,011 and Wilkinson with 11,099. All three counties have insufficient populations individually to have one Representative but are substantially close in population to assure relative equal voting strength; therefore, the two Representatives shall reside in the district and be elected district wide.

District 37 (2 Representatives)

Covington with a population of 14,002 is combined with Jefferson Davis with a population of 12,936 and with Lawrence with a population of 11,137. This district bears great similarity with District 34 as to population, deviations below the norm and variances among the individual county population, therefore, for the reasons set forth for District 34, the two Representatives elected from District 37 shall reside anywhere in the district and be elected by the district at-large.

District 38 (2 Representatives)

In compliance with the norms and variances set forth for district 2, 16, 18 and 27, Marion with a population of 22,871 is combined with Walthall with 12,500, with the two Representatives allocated to this district being residents of the district and elected district at-large.

District 39 (4 Representatives)

Lamar County with a population of 15,209 has 84% of the norm for a Representative. It must be combined with Forrest County with a population of 57,859. In view of Lamar's nearness in population to the norm, together with the fact that Hattiesburg, Mississippi, is situated in both counties, it becomes necessary in order not to disfranchise the electorate of Lamar County, that no residency requirement should be imposed in favor of Forrest County; therefore, all four Representatives to be elected from this district may reside anywhere in the district and may be elected by the district at-large.

District 42 (1 Representative)

Greene with a population of 8,545 is combined with Perry with a population of 9,065 in compliance with the deviations below the norm and the variances set forth in District 21, the one Representative allocated to District 42 shall reside anywhere in the district and be elected district at-large.

District 31 (12 Representatives)

Hinds County (214,973)

This is clearly the largest county in the State. The United States District Court is currently considering the redistricting of the supervisors districts of Hinds County in *Kirksey* v. *Board of Supervisors of Hinds County,* Civil Action No. 4939, and shall in the immediate future render a decision which shall establish the supervisors district lines for this county; therefore, in view of the upcoming proper apportionment of the supervisors districts of Hinds County, the committee feels it in the best interest of the State if the twelve House members allocated to Hinds County be so allocated on the following basis: two Representatives shall reside within and be elected from each of the five supervisors districts of Hinds County, and two members to reside within the county and be elected by the county at-large. In elections to be held in 1975 the Representatives to be elected from Hinds County, except those elected from Posts 11 and 12, shall be elected as provided above from said supervisors districts as said districts are determined or approved by the Court in *Kirksey* v. *Board of Supervisors of Hinds County,* regardless of any modifications to said districts brought about by appellate review.

In all legislative elections held subsequent to 1975, the Representatives to be elected from District 31 (except those elected from Posts 11 and 12) shall be elected as provided above from said supervisors districts as said districts are finally determined or approved by the district court or as

approved or modified by the appellate courts in the event of appeal.

District 45 (7 Representatives)

Harrison County (134,582)

The United States District Court has acquired jurisdiction over the redistricting of the supervisors districts of Harrison County in *Reed* v. *Quave,* Civil Action No. 3146. The Court determined that the 1970 census did not accurately reflect the population of the individual supervisor district in that the devastating effect of Hurricane Camille in August, 1969, had resulted in a temporary shift in the population of Harrison County, making it impossible to ascertain with any degree of accuracy the population of the respective supervisor districts; thus the Court in *Reed* v. *Quave* found that the existing supervisor district lines remain intact until further order of the Court. In view of the existing uncertainty as to the populations of the individual supervisor districts, the committee feels it in the best interest of the State to require at-large elections for Representatives in Harrison County; therefore, the seven Representatives allocated to Harrison County shall be so allocated on the following basis: one Representative shall reside within each of the five supervisor districts and be elected by the county at-large, and two shall reside anywhere within the county and be elected by the county at-large.

District 46 (6 Representatives)

George County with a population of 12,459 is bordered on the east by Alabama. George County not having enough population to satisfy the norm, must be combined with Jackson County, which has a population of 87,975; therefore, because of the fact that the population of Jackson County is so much greater and overwhelms the population of George County, it is necessary that in order not to disfranchise the people of George County, that one of the six

Representatives allocated to this district shall reside in George County and be elected by the district at-large. The committee determined that the devastating effect of Hurricane Camille in August, 1969, resulted in a temporary shift in population of Jackson County, making it impossible to ascertain with any degree of accuracy the population of the respective supervisor districts of said county; therefore, the committee feels it to be in the best interest of the State to require that one Representative shall reside within each of the supervisor districts of Jackson County and be elected by both counties.

The above apportionment plan for the House of Representatives has an average percentage variance of 9.99%, with the average deviation above the norm being 4.45% and the average deviation below the norm being 5.54%. No district varies from the norm by as much as 10%, and twenty-one vary by less than 5%.

District No.	County or Counties	No. of Representatives	County Population	District Population	District Deviation
1	Alcorn	3	27,179	50,536	—3980 (—7.3)
	Benton		7,505		
	Tippah		15,852		
2	Prentiss	2	20,133	35,073	—1271 (—3.5)
	Tishomingo		14,940		
3	DeSoto	3	35,885	59,912	+5396 (+9.9)
	Marshall		24,027		
4	Itawamba	5	16,847	97,038	+6178 (+6.8)
	Lee		46,148		
	Monroe		34,043		
5	Chickasaw	1	16,805	16,805	—1367 (—7.5)
6	Pontotoc	1	17,363	17,363	— 809 (—4.5)
7	Union	1	19,096	19,096	+1734 (+5.1)
8	Calhoun	2	14,623	38,804	—2460 (—6.8)
	Lafayette		24,181		
9	Panola	2	26,829	38,744	+2400 (6.6)
	Yalobusha		11,915		
10	Tate	1	18,544	18,544	+372 (+2.1)
11	Coahoma	4	40,447	68,189	—4499 (—6.2)
	Quitman		15,888		
	Tunica		11,854		
12	Tallahatchie	1	19,338	19,338	+1166 (+6.4)
13	Sunflower	2	37,047	37,047	+703 (+1.9)
14	Bolivar	3	49,409	49,409	—5107 (—9.4)
15	Issaquena	4	2,737	73,318	+630 (0.87)
	Washington		70,581		
16	Holmes	2	23,120	37,721	+1377 (—3.8)
	Humphreys		14,601		
17	Carroll	3	9,397	51,508	—3008 (—5.5)
	Leflore		42,111		
18	Grenada	2	19,584	32,772	—3572 (—9.8)
	Montgomery		12,918		

District No.	County or Counties	No. of Representatives	County Population	District Population	District Deviation
19	Attala	1	19,570	19,570	+1398 (+7.7)
20	Winston	1	18,406	18,406	+234 (+1.3)
21	Choctaw Webster	1	8,440 10,047	18,487	+315 (+1.7)
22	Clay	1	18,840	18,840	+668 (+3.7)
23	Lowndes Noxubee Oktibbeha	5	49,700 14,288 28,752	92,740	+1880 (+2.1)
24	Kemper Lauderdale	4	10,233 67,087	77,320	+4632 (+6.4)
25	Clarke Jasper Newton	3	15,049 15,994 18,983	50,026	
26	Leake Neshoba	2	17,085 20,802	37,887	+1543 (+4.3)
27	Scott Smith	2	21,369 13,561	34,930	—1414 (—3.9)
28	Madison Rankin	4	29,736 43,933	73,670	+986 (+1.4)
29	Sharkey Yazoo	2	8,937 27,304	36,241	—103 (—0.27)
30	Claiborne Warren	3	10,086 44,981	55,067	+551 (+1.0)
31	Hinds	12	214,973	214,973	—3091 (—1.4)
32	Copiah Jefferson	2	24,749 9,295	34,044	—2300 (—6.3)
33	Adams	2	37,293	37,293	+949 (+2.6)
34	Amite Franklin Wilkinson	2	13,763 8,011 11,099	32,873	—3471 (—9.5)
35	Lincoln Pike	3	26,198 31,813	57,954	+3438 (+6.3)

District No.	County or Counties	No. of Representatives	County Population	District Population	District Deviation
36	Simpson	1	19,947	19,947	+1775 (+9.8)
37	Covington Jefferson Davis Lawrence	2	14,002 12,936 11,137	38,075	+1731 (+4.8)
38	Marion Walthall	2	22,871 12,500	35,371	—973 (—2.7)
39	Forrest Lamar	4	57,849 15,209	73,058	+370 (+0.52)
40	Jones	3	56,357	56,357	+1841 (+6.1)
41	Wayne	1	16,650	16,650	—1522 (—8.4)
42	Greene Perry	1	8,545 9,065	17,610	—562 (—3.1)
43	Pearl River Stone	2	27,802 8,101	35,903	—441 (—1.2)
44	Hancock	1	17,387	17,387	—785 (—4.3)
45	Harrison	7	134,582	134,582	+7378 (+5.8)
46	George Jackson	6	12,459 87,975	100,434	—8598 (7.9)

Positive		*Negative*	
District	Percentage	District	Percentage
3	9.9	18	9.8
36	9.7	34	9.5
19	7.7	14	9.3
4	6.8	41	8.4
8	6.8	25	8.2
9	6.6	46	7.9
12	6.4	5	7.5
24	6.4	1	7.3
35	6.3	32	6.3
40	6.1	11	6.2
45	5.8	17	5.5
7	5.1	6	4.5
37	4.8	44	4.3
26	4.3	27	3.9
16	3.8	2	3.5
22	3.7	42	3.1
33	2.6	38	2.7
10	2.1	31	1.4
23	2.1	43	1.2
13	1.9	29	0.27
21	1.7		
28	1.4		
20	1.3		
30	1.0		
15	0.87		
39	0.52		

[From Transcript of May 7, 1975 Proceedings]

[8] By Judge Coleman:

But it's not altogether as ancient as I got the impression from your original statement. Now, the next question I want to ask you while we are on this, from the beginning of the state government until the present day has there ever been any fracturing of county lines in the election of either representatives or senators to the Mississippi Legislature?

By Mr. Parker:

We have not been able to find any.

By Judge Coleman:

I think what it's going to come down to in the decision in this case is whether or not the legislature has in fact complied with the principles enunciated by the Supreme Court in its decision in Mayhan V. Howell. I realize that you are arguing that there should be single member districts throughout the state of Mississippi and there is no purpose here of foreclosing that argument, certainly the Supreme Court said in the North Dakota case if the Federal Courts were to do it they should set up single member districts. But you may proceed from there.

By Mr. Parker:

This state policy providing fair and effective repre-

• • • • • • • • • •

[66] By Mr. Parker:

I can announce to the Court that it is plaintiffs understanding that for 1970 and 1974 two bills that were introduced by Representative Robert Clark were passed. One bill made fox lures unlawful and the second bill provided for a sickle cell anemia program.

By Judge Coleman:

A sickle cell anemia program would certainly be helpful to the black people, wouldn't it?

By Mr. Parker:

Yes, sir.

By Judge Coleman:

I would hope that it would be used to the fullest because that's a scourge that needs to be eliminated if it can be and the House did pass that. Now let's go over some of these other bills. He has a bill here to declare that Martin Luther King and Medger Evers birthdays be legal holidays. He's got an act to make failure to vote a crime, he's got a bill to establish uniform training programs concerning election laws for all poll workers to require the Mississippi Election Commission to administer such a program. The next to provide assistance to the illiterate voter by permitting a member of his family to aid him in marking his ballot, which would certainly be good for the white [67] illiterate as well as the black, it might be more helpful to the black. An act to provide for the construction of an identification sign indicating the proper off ramp for Jackson State College on Interstate 55 and Interstate 20. An act to provide for compulsory school attendance in the State of Mississippi, which I think we can take judicial notice as being strongly supported by many white people as well as black and so on. Well, do you think it's necessary to introduce, do you think that this Court or the Supreme Court ought to read all these bills to determine their merit or would this list, this description, be sufficient, Mr. Parker?

By Mr. Parker:

Well if we had to choose between the bills and the descriptions we would——

By Judge Coleman:

Well I know——

By Mr. Parker:

(Continuing) choose the bills, but the descriptions, I think, are helpful.

By Judge Coleman:

I'm not driving you to a choice, I'm just asking you, isn't it really a fact that everything really worthwhile can be taken from this two page list, I just

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Defendants' Objections to Plaintiffs' Motion for Injunctive Relief and to Enforce the Mandate of the Supreme Court of the United States, and to the Motion of the United States for Preliminary Injunction

[TITLE OMITTED IN PRINTING]

[FILED JUNE 19, 1975]

Defendants concur with plaintiffs that this Court should enforce the mandate of the Supreme Court of the United States, but defendants strongly object to the relief requested therewith and submit that the relief requested by plaintiffs and the United States in their respective motions seeking preliminary and permanent injunctions is in direct contravention of the decision and mandate of the Supreme Court of the United States entered in *Connor* v. *Waller,* No. 74-1509 on June 5, 1975. In support hereof, defendants submit the following, to-wit:

1. By petition filed simultaneously herewith, defendants pray for the issuance by this Court of a Writ of Mandamus directed to the Attorney General of the United States requiring him to act in accordance with his officially adopted policy of deferring to the judicial determination of the Fifteenth Amendment challenges to election changes submitted to the Attorney General of the United States pursuant to Section 5 of the Voting Rights Act of 1965 as amended, 42 U.S.C. 1973c, thereby requiring the Attorney General to withdraw his objection to House Bill 1290 and Senate Bill 2976, Miss. Laws, 1975 Regular Session, and clear these acts for immediate implementation. *Harper* v. *Levi,* Nos. 73-1766 and 73-2035, United States Court of Appeals for the District of Columbia Circuit.

2. Defendants object to the implementation of either the Valinsky Plan (Exs. P-19, P-20) or the Kirksey Plan (Exs. P-33, P-34) and to the implementation of any state-

wide single-member district plan for the 1975 legislative elections in that the imposing of any such reapportionment plan on the State of Mississippi by this Court would violate and contravene Mississippi's well established policy for the preference of some multi-member districts in both the Mississippi House of Representatives and the Mississippi Senate. Thus, such action by this Court would be contrary to the mandate of the Supreme Court of the United States "to require the conduct of the 1975 elections pursuant to a court-ordered reapportionment plan that complies with this Court's decision in *Mahan* v. *Howell,* 410 U.S. 315 (1973), *Connor* v. *Johnson,* 404 U.S. 549 (1972) and *Chapman* v. *Meier,* —— U.S. —— (1975)."

3. Defendants further object to the imposition of the statewide single-member district plans suggested by plaintiffs and the United States for the conduct of the 1975 legislative elections on the grounds that to order such a reapportionment plan would cause great harm to the citizens of the State of Mississippi. In any statewide single-member district plan for Mississippi, 122 single-member districts would have to be created for the House and 52 single-member districts would have to be created for the Senate. Mississippi has 82 counties, 410 supervisors' districts and 2,101 precincts. To superimpose 52 Senate districts over 122 House districts on 82 counties would result in splitting counties, supervisors' districts and even precincts. To impose this entirely new apportionment procedure for the 1975 legislative elections where House districts cross Senate districts which cross county lines, where one beat is joined with another beat, where a beat of one county is joined with another county or a beat or beats of another county, and where even precincts of one county might be joined with precincts of another county would without question present insurmountable difficulties for the State of Mississippi, for its election officials, for legislative candidates and, more importantly, for the electorate of the State of Mississippi.

4. For the conduct of the 1975 legislative elections, defendants would show that the mandate of the Supreme Court of the United States requires this Court to readopt its reapportionment plan of 1971, which was never held to be unconstitutional, and to order the creation of small multi-member House districts composed of supervisors' districts for the Counties of Hinds and Harrison, with only two representatives for each of said counties being elected from the respective counties at large, and to order that five representatives elected from Jackson and George Counties reside in each of the respective supervisors' districts of Jackson County, with that district's sixth representative being a resident of George County. Such a court-ordered plan is in compliance with the decisions of the Supreme Court of the United States in *Mahan* v. *Howell,* 410 U.S. 315 (1973), *Connor* v. *Johnson,* 404 U.S. 549 (1972) and *Chapman* v. *Meier,* —— U.S. —— (1975), for in creating small multi-member districts for Hinds County, where the subdistricts elect only two representatives and two are elected at large; and for Harrison County, where the sub-districts elect only one representative and two are elected at large, the *large* multi-member districts frowned upon by the Supreme Court in *Connor,* supra, are avoided. The well established state policy of multi-member districts for the election of the Mississippi Legislature is adhered to as required under *Chapman* v. *Meier,* supra, and *Mahan* v. *Howell,* supra, thus giving deference to the rational state policy of maintaining the integrity of the basic unit of government in the State of Mississippi, i.e., 82 counties under *Mahan* v. *Howell,* supra. This is the mandate of the Supreme Court of the United States.

Wherefore, defendants respectfully submit that for the 1975 legislative elections this Court readopt the 1971 court-ordered plan with the changes for Hinds, Harrison and Jackson Counties as set out in paragraph 4 above.

Respectfully Submitted,

A. F. Summer
Attorney General
State of Mississippi

Giles W. Bryant
Special Assistant Attorney General

William A. Allain
Special Counsel

/s/ By: A. F. Summer
A. F. Summer

[Certificate of Service Omitted in Printing]

[From Transcript of June 20, 1975 Hearing]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

CIVIL ACTION NUMBER 3830(A)

PEGGY J. CONNOR, ET AL *Plaintiffs*

v.

WILLIAM L. WALLER, ET AL *Defendants*

APPEARANCES:

HON. FRANK R. PARKER and HON. HERMAN WILSON, 233 North Farish Street, Jackson, Mississippi 39201;

HON. JOHN L. MAXEY, II, P.O. Box 22571, Jackson, Mississippi 39205;

For the Plaintiffs.

HON. GERALD W. JONES and HON. MICHAEL D. JOHNSON, Department of Justice, Civil Rights Division, Washington, D.C. 20530;

For the United States of America.

HON. A. F. SUMMER, HON. WILLIAM ALLAIN and HON. GILES BRYANT, P.O. Box 220k Jackson, Mississippi 39205;

For the Defendants.

BE IT REMEMBERED that on, to-wit: Friday, June 20, 1975, the above styled and numbered cause came on for hearing before the HONORABLE J. P. COLEMAN, United States Circuit Judge, HONORABLE WILLIAM HAROLD COX and HONORABLE DAN M. RUSSELL, JR., United States District Judges, at Jackson, Mississippi, in the Jackson Division, when the following proceedings were had and entered of record:

[2] BY JUDGE COLEMAN:

This time and place is designated for a further hearing on Mississippi's reappportionment problems. Are the plaintiffs ready to proceed?

BY MR. PARKER:

The plaintiffs are ready, Your Honor.

BY JUDGE COLEMAN:

What says the government?

BY MR. JONES:

Ready, Your Honor.

BY JUDGE COLEMAN:

Pardon me, Justice. Mr. Summer?

BY MR. SUMMER:

The defendants are ready, Your Honor.

BY JUDGE COLEMAN:

Now gentlemen we have filed in here a petition for the writ of mandamus by the Attorney General in which he seems to infer that the Department of Justice believes in one law for Rome and another law for Athens. I suppose that we should take that up first thing this morning before we get over into the merits of this matter. Are you ready to proceed on that, Mr. Summer?

BY MR. SUMMER:

Ready to proceed, if the Court please.

BY JUDGE COLEMAN:

[3] You may proceed.

BY MR. SUMMER:

We have asked for this petition for writ of mandamus pursuant to Section 28 USC 1361 to direct the Attorney General of the United States to withdraw his objection to House Bill 1290 and Senate Bill 2976 to hold the elections for the 1975 legislature. We alleged that there is a clear duty owed to the State of Mississippi to approve these bills under the United States Attorney General's deferral policy, his rules, regulations adopted as rules and regulations and is the policy of the Attorney General. On June 9th we submitted according to the order of the U. S. Supreme Court, we submitted both bills to the Attorney General for his approval or disapproval. On June 10th those, he received them on June 9th and on June 10th after a reasoned consideration those bills were objected to and we were refused the right to use those bills as a plan to run the '75 legislative election. Such action of the Attorney General of the United States is in irreconcilable conflict with his officially adopted policy. The Department of Justice has developed rules and regulations and procedures designed to avoid conflicts between administrative review under Section 5 of the Voting Rights Act and Federal Litigations [4] based on the Fourteenth or Fifteenth Amendment attacks upon the reapportionment plan. The Attorney General's policy has been to defer to judicial determination regarding racial discrimination as set out in Georgia v. United States, footnote 6. It is well settled of course that an administrative agency must follow its own established procedures.

BY JUDGE COLEMAN:

Well now let's see, just what happened in the Georgia case?

BY MR. SUMMER:

In the Georgia case the Attorney General objected, the case went to the Court under a plan devised by the legislature which I believe was Plan A.

BY JUDGE COLEMAN:

The Attorney General in the Georgia case as I recall it, the Attorney General of the United States objected and then Georgia just went ahead anyway, just paid it no attention.

BY MR. SUMMER:

That's correct.

BY JUDGE COLEMAN:

Then what, the three judge Court nullified it, did they not, and the Supreme Court of the United States affirmed.

[5] BY MR. SUMMER:

They first had a hearing on Plan A which the three judge panel heard and refused on other grounds but upheld on the Fourteenth and Fifteenth Amendment grounds. They refused it as to the other parts of the plan. Then the legislature passed another plan, they came back to the Court and it was submitted to the Attorney General and he said in view of the fact that the Court had ruled on the Fourteenth and Fifteenth Amendments that under their rules and regulations they were prevented from giving a no answer and they were, in order to keep the harmony between the Administrative Department and the Justice Department and the Court that they would enter no objection. This was a well-established plan, it was recognized first in the Allen case that this may be a problem, it came up in the Allen case, but the Supreme Court refused to take a look at it at that time, they said we have had no experience with it and it may, the fact that it has to go both routes may create problems but we're not ruling on that at this time. Later on in the Georgia case they came back and according to the brief submitted by the Department of Justice they put a footnote in the Georgia case wherein it said that we have had some experience since [6] the Allen case, there has been three hundred and some odd reapportionment decisions. Only 19 of them have been litigated, so

all of the administrative problems which we may have anticipated are not occurring because the United States Attorney General has adopted the rules and regulations where he will defer to those matters in litigation and will adopt the Court's plan. Now that is set out as footnote 6 in Georgia v. United States. So the Supreme Court recognized in that case that they had rules and regulations, they had a policy and it prevented the crash between the administrative agencies and the courts, whereas their own policy they said that when a Court, a District Court, three judge panel, had made the decision involving the Fourteenth and Fifteenth Amendment rights that those were the exact same things that were involved in Section Five, that Section Five was bottomed on the Fifteenth Amendment and when those rights had been determined by a Court that they would defer and that was their policy.

By Judge Coleman:

All right, now there's not any doubt of course, the law books are full of the principle that executive departments and agencies are bound by their own rules and regulations so I don't think it's necessary for [7] you to discuss that——

By Mr. Summer:

(Interposing) All right.

By Judge Coleman:

Where else and on what other occasions has the department, if any, followed any such rules or regulations of its own making?

By Mr. Summer:

Well of course the only case we have found and they said there's 19 in litigation in their own brief, they would know better than I, but they stated in their own brief that there had only been 19 cases in litigation and they had referred to that——

By Judge Russell:

Is that the South Carolina case you're referring to?

By Mr. Summer:

With the South Carolina case, yes, sir. That was known as the Twiggs Case in South Carolina. And of course that went a little bit further. After the Attorney General deferred to the South Carolina Court the plaintiffs there went on up to the District of Columbia Court and they filed an action to say that the Justice Department couldn't do that, and of course this is where the Justice Department comes in broadside [8] like a Mack truck and says oh yes we can, it is our rules and regulations, it is our policy, it is the policy that we have followed, we did it in the South Carolina Case and apparently 19 other cases and since the Section Five covers the same thing as the Fifteenth Amendment rights that a three judge panel court has the right to decide those questions just as much as when a matter is in litigation, just as much as a District Court of Columbia or the United States Attorney General and that case is still in the, as far as I know, I'm not able to determine, the Court of Appeals in Washington, D. C., but we picked up from the Justice Department brief to the Court of Appeals their position on this matter and we say that having taken this position consistently in 19 cases apparently and certainly in the case of North Carolina which is a covered state under the Voting Rights Act and which is almost identical to the case that we have at bar here——

By Judge Russell:

You mean the South Carolina Case.

By Mr. Summer:

Excuse me, South Carolina, yes, sir. That they cannot then turn around when Mississippi's time comes around and say oh no, that's not our policy, we are going to [9] object to yours and not only are we going to object but

we are going to come in and try to impose a different plan from that which the Court has decided, after having acknowledged that the Court had the authority to decide the Fourteenth and Fifteenth Amendment questions and they would not challenge it because it would create insurmountable problems between the Judiciary and the Executive Department. And as stated reading from their own brief, our only function under Section Five of the Voting Rights Act is to review submitted acts for Fifteenth Amendment compliance as nearly as posssible in the same manner that the District Court of Columbia would have had to act then presented there a subject of a declaratory judgment action. Under this standard we feel constrained to defer to the above determination of the three judge District Court. The District Court unquestionably had jurisdiction to consider the issues presented to it under both the Fourteenth and Fifteenth Amendment and it has specifically found Plan A to be unconstitutional, the South Carolina Case. Parties who feel aggrieved by its decision have a full right to seek appellate review. It will in our view not be appropriate to read the Voting Rights Act as requiring or permitting the Attorney General to review a determination [10] made by a United States District Court in the proper exercise of its statutory jurisdiction. For this reason we enter no objection to the implementation of Plan A 1205.

By Judge Coleman:

All right, now South Carolina, was this a legislative enactment?

By Mr. Summer:

This was a legislative enactment.

By Judge Coleman:

Had it been submitted to the Attorney General?

By Mr. Summer:

It had been submitted to the Attorney General.

By Judge Coleman:

He had objected?

By Mr. Summer:

He had objected and they proceeded on with the trial.

By Judge Coleman:

Litigation?

By Mr. Summer:

With the litigation to the end that the Court ruled and the acquiescence or deferrance came after the ruling of the Court.

By Judge Russell:

That was the two plans they had, didn't they have Plan [11] A and Plan B?

By Mr. Summer:

Well, there was a Senate plan and there was a House plan and of course it involved the same thing that we've got here, multimember districts, single shot voting, all of those things that we have involved in this case which they say they objected to in the first place, in the first case, but since in the first case the Fourteenth and Fifteenth Amendment questions were settled then they weren't, that in the second trial since the three judge panel had already decided the Fourteenth and Fifteenth Amendment question they were not even permitted, according to themselves, their own rules and regulations, to enter an objection.

By Judge Coleman:

Well have you ever seen any printed rules and regulations, they promulgated rules and regulations for the enforcement of the Voting Rights Act, didn't they?

By Mr. Summer:

They have promulgated rules, if the Court please, and of course we are taking their own words from their own briefs that they do have rules and regulations that is a deference to a court decision. Now they would be better able to show those rules and regulations but the [12] Attorney General observed in that same brief now, this is known as or was known as the Richardson Case, now it is known as the Harper Case, because the reason it got to the Circuit Court of Appeals up there was when the plaintiffs brought the action in the District Court, a single district judge ordered the Justice Department to give South Carolina a reasoned decision. All right, they came back and gave North Carolina a reasoned decision and said for the reasons we have just gone over and that we do not object. Then the District Court Judge came back and said no, that won't do, we order you to object to the South Carolina plan and this is what it, as I understand it, is why it is in the Circuit Court of Appeals right now. And when the Court ordered them to object was when the Justice Department prepared this brief from which I have been quoting to justify their policy of deferral, and of course we could not have, it was basically the same brief that we presented to the United States Supreme Court on the application for stay in this case but they took another position, they mildly suggested in their brief to the United States Supreme Court in this case that they may not be able to do that, but then they went on of course and requested the same relief that the plaintiffs have requested here and have [13] and have taken an absolute opposite position and we say that under the Cardy rules and so forth that following an agency's rules and regulations that they have no other choice. We submitted it to them as the Court ordered, and the Supreme Court simply said that we could not hold those elections under the 75 plan unless, until and unless it was submitted to the Attorney General and cleared and say approved or,

it seemed to recognize its own statements in the Georgia case wherein it approved the deferral policy, so we are contending of course that since the plan has been submitted, since this Court has made the determination after long and protracted hearings and has reached the questions under the Fourteenth and Fifteenth Amendments that their policy, their rules and regulations and policies in effect, and they have no other choice than to approve it.

By Judge Russell:

You say under policy now of the department, now are there any rules, now we listened to rules all day yesterday, part of yesterday in another three judge case in Biloxi, of a time that they had in which to either act or not act. Now then those rules have been amended from time to time. Are you speaking of rules or are you speaking of policy?

[14] By Mr. Summer:

If the Court please, the only way I can answer that question is I do not have that knowledge other than the fact that they themselves, the Department of Justice, said in their brief and to the Circuit Court of Appeals in Washington that they had developed rules and regulations and implemented a policy of deferral. Now I presume they would not have said that to the Court had they not developed such rules and regulations and had, and if they did not have such a policy of deferral.

By Judge Russell:

Do you have a copy of the rules and regulations?

By Mr. Summer:

No, sir, I do not, no, sir.

By Judge Coleman:

Well it's to be presumed, of course, that they told the truth about it in their representations to the Court, that

doesn't really give us a full picture, we'll probably get that from the government's lawyers when they have a chance to talk.

By Mr. Summer:

I had presumed since they were in the Court they would be more, we have never received a copy of those to my knowledge, that deferral policy, but since it has [15] been referred to in the cases that have been before the Supreme Court since the Supreme Court has commented on it favorably as being the answer to the questions of administrative difficulties raised in the Allen Case then certainly we would have to presume that such was in existence. Then in going on in quoting from their brief, we are not going to dwell on that at any length of time, that the Attorney General's determination to defer to the decision of the District Court is not inconsistent with his responsibilities under the Voting Rights Act, words of the Department of Justice, and I believe that we had cited to this Court, I know we cited to the Supreme Court in our brief the caveat that I mentioned in the Allen case that they would decide later, and this is the United States Court's words in the Georgia Case. The caveat implicit in this language could support the appellant's position only if practical problems of administration had emerged in the period that had elapsed since Allen was decided. This does not appear to have been the case. The brief of the United States advises us that the Department of Justice has adopted procedures designed to minimize any conflict between Section Five administrative review and Federal Court litigation based on Fourteenth and Fifteenth Amendment attacks [16] upon state reapportionment plans where a plan has been submitted to the Attorney General and is at the same time being litigated with respect to a Fifteenth Amendment claim the Attorney General has deferred to the judicial determination regarding racial discrimination. And of course that language

strongly suggests that the Attorney General's policy represents what the United States considers to be a construction of the Act, of the Voting Rights Act as well. So I could go on and on in that regard, basically I have the cases that of course an administrative agency is compelled to follow its own rules, it doesn't have to make those rules but once it makes them it has to follow them as the Court knows. They apparently have made those rules. Having made them and having observed them in regard to other states they cannot at this time discriminate against the State of Mississippi by taking another position and refusing to use their policy of deferral and accordingly we ask that, we say that they, we are entitled to a writ of mandamus for them under their policy of deferral since this Court has decided those issues in this case to immediately or upon a writ of mandamus clear or approve the two acts of the 1975 legislature and we be allowed to proceed with that plan.

[17] By Judge Coleman:

Now Mr. Jones, before you begin I want to be absolutely certain that we understand each other. You are here with the full knowledge and authority of the Attorney General of the United States in this case?

By Mr. Jones:

That is correct, Your Honor.

By Judge Coleman:

And you have as his representative the right to speak for him and on his behalf.

By Mr. Jones:

That is correct.

By Judge Coleman:

And you are parties to this litigation, of course.

BY MR. JONES:

Yes, sir.

BY JUDGE COLEMAN:

All right.

BY MR. JONES:

May it please the Court, we believe that the defendant's petition for mandamus in this case is completely without merit. First of all we are faced with a question of jurisdiction. Section 14B of the Voting Rights Act of 1965 makes it clear that any attack upon the performance or authority of a Federal Official while acting under [18] the auspices of the Voting Rights Act is an issue relegated to the sole jurisdiction of the District Court for the District of Columbia. The Section reads that in particular no court other than the District Courts of the District of Columbia or a Court of Appeals in any proceeding under Section 9 shall have jurisdiction to issue any declaratory judgment pursuant to Section 4 or 5 or any restraining order or temporary or permanent injunction against the execution or enforcement of any position of this Act or any action of any federal officer or employee pursuant hereto. We think that that effectively disposes of the claim for mandamus against the Attorney General in this Court.

BY JUDGE COLEMAN:

What about though that when he is part of the litigation. The Attorney General now is a litigant in this Court and before us. The truth is we don't have to mandamus him.

BY MR. JONES:

The Act speaks specifically in terms of injunctive or any other type relief against an employee pursuant to his functions under the Act and that would seem to include the action of the Attorney General in this case in interposing the objection to the submission [19] from the state last week. However, there are several other grounds upon which the Court here should deny this petition for mandamus. The second one is that under the structure of the Voting Rights Act the State has an adequate remedy specifically provided for in the Act, Section 5 itself, that is whenever the Attorney General interposes an objection that does not preclude the State from pursuing the specific remedy established in the Act itself which is that the change cannot be implemented until a declaratory judgment is obtained from the District Court for the District of Columbia. So therefore he does have, the State does have an adequate remedy at law in the State so to speak. Thirdly, on the fact, on the substance of the petition this case is as a matter of posture quite different from the South Carolina Case, Harper versus Levi, which the defendants rely upon.

BY JUDGE COLEMAN:

That case, is it still pending in the Court of Appeals or——

BY MR. JONES:

(Interposing) It is still pending decision, Your Honor.

BY JUDGE COLEMAN:

What is the name of the case, please?

BY MR. JONES:

[20] Harper versus Levi, L e v i, he is the present Attorney General of the United States.

BY JUDGE COLEMAN:

Oh, I see, the word Levi is in there because he is the Attorney General.

BY MR. JONES:

That's right.

By Judge Coleman:

Harper V. Levi.

By Mr. Jones:

In that case what happened was that a submission was made to the Attorney General of an Act reapportioning the State Legislature in South Carolina. That submission, that Act, included various features including multimember districts, majority vote requirement and numbered seat provisions. Those, under our analysis, those features made the plan objectionable and the Attorney General interposed an objection on that basis. Subsequently thereto the District Court in South Carolina in which that same legislation was pending in a private suit held that same act unconstitutional on Fourteenth Amendment ground.

By Judge Coleman:

May I stop and think with you there just a minute. If the objection of the Attorney General is sufficient [21] to kill a proposal, to render it absolutely inoperative, what further business did the Attorney General, did the District Court in South Carolina have of the matter, the State could not put it into effect.

By Mr. Jones:

That is correct, Your Honor, but the litigation in the District Court was brought on Fourteenth Amendment grounds, Fifteenth Amendment grounds, and there was also a Section 5 count——

By Judge Coleman:

That's what we have in this case, we've got Fourteenth Amendment——

By Mr. Jones:

(Interposing) That's correct.

By Judge Coleman:

(Continuing) One man, one vote and Fifteenth Amendment and Section 5.

By Mr. Jones:

So I would assume that this Court in South Carolina wanted to definitely dispose of the Fourteenth Amendment issue even though the Attorney General had objected and the plan would have been unenforceable after a declaratory judgment of the District of Columbia Court.

By Judge Coleman:

[22] Well now if no election could be held how could there be a Fourteenth Amendment issue?

By Mr. Jones:

The determination of the Attorney General on the voting rights does not go specifically to the Fourteenth Amendment issue.

By Judge Coleman:

I know, but——

By Mr. Jones:

(Interposing) So that issue insofar as was raised in the District Court was still liable and the——

By Judge Coleman:

Anyway the District Court did go on and did say that this was an illegal act, in other words, or unconstitutional?

By Mr. Jones:

It did not satisfy Fourteenth Amendment requirements, that's right.

By Judge Coleman:

What did it say about Fifteenth and the voting rights?

BY MR. JONES:

It ruled on Fifteenth Amendment issues also, it——

BY JUDGE COLEMAN:

Now why did they do that when the Attorney General had already objected to——

[23] BY MR. JONES:

(Interposing) Well that ruling came prior to the Attorney General, as a matter of fact I think it was in a preliminary proceeding in that same litigation, the Court ruled that the plan was not viable of the Fifteenth Amendment right. After the Attorney General objected the plan was found to be viable, violative of Fourteenth Amendment rights. Therefore, thereafter the State went back to the drawing boards and came up with another plan.

BY JUDGE COLEMAN:

Passed by the legislature?

BY MR. JONES:

Passed by the legislature. That plan like the previous plan, and in both instances there were alternatives A and B, they actually passed two plans in each instance and submitted both so that if one didn't pass Section 5 muster the other might, but in the first instance we found that both violated Section 5 because both included these objectionable features. When they went back to the drawing board they came up with another plan which also incorporated those same features and I have to backtrack here one moment. The Court in ruling on Fifteenth Amendment issues, I was correct the first time, did rule on both [24] issues in the disposition of the case after the Attorney General had objected. In other words, the Attorney General, the Court's ruling on Fifteenth Amendment issues came in-between the passage of the second, I'm still getting ahead of myself, the——

BY JUDGE COLEMAN:

Just take your time because I realize——

BY MR. JONES:

(Interposing) That's right——

BY JUDGE COLEMAN:

(Continuing) it's hard to keep them straight but I have not had a chance, see these papers were only filed yesterday and your answer was only filed yesterday, your brief, so I haven't had a chance to read the case. South Carolina is a state that I know a lot about but I don't know anything about their legislature.

BY MR. JONES:

The Court ruled on the Fifteenth Amendment issue after the objection. The plan, the State went back and reenacted another plan which incorporated the same features and submitted that to the Attorney General, at the same time submitting it to the Court in the pending litigaion. The Court, while we were still considering under Section 5, ruled that that plan [25] met constitutional standards referring back to its previous decision which had found the plan acceptable under both the Fourteenth and the Fifteenth Amendments. On the basis of that ruling of the Court which in effect was saying that the plan met Fifteenth Amendment requirements as well as Fourteenth Amendment requirements, the Attorney General wrote to the State saying that in view of that ruling he felt constrained to defer to this District Court which had ruled on the Fifteenth Amendment problem and this is the policy——

BY JUDGE COLEMAN:

He didn't feel constrained to do that though in our case. After we had finished with it he went up to the Supreme Court and filed an amicus brief.

By Mr. Jones:

Well that's the difference in the posture of the cases, Your Honor. Our policy differs insofar as it exists and really it's not so much a policy and practice as a policy and theory because that is the only case of which I'm aware and I've been in the Section 5 business since 1969, in which the Attorney General actually deferred to a District Court ruling. The general procedure, what happens, is that the District Court will withhold its ruling on the merits until such time as the plans have been submitted to the [26] Attorney General and received his evaluation. However, in this case what happened was that no submission was made, the instant case I'm talking about now, no submission was made to the Attorney General.

By Judge Coleman:

Well we had retained jurisdiction in this case specifically stated in boxcar letters back in 1966 and y'all didn't tell the Supreme Court a thing about that in your papers.

By Mr. Jones:

We understand that, Your Honor, and perhaps maybe in some respect we were somewhat remiss on that, it's hard to catch all of, uhh, what we did in this case though was the case, that the policy of deference, base policy, which we have engaged in, has been——

By Judge Russell:

How are your policies spelled out, that's what, I looked at rules all day yesterday in another case in Biloxi and this——

By Mr. Jones:

(Interposing) This policy is not——

By Judge Russell:

(Continuing) Is this just policies or rules or regulations?

By Mr. Jones:

[27] It's just an informal working relationship that we have developed over the years.

By Judge Russell:

Well do they change on each individual case or are they consistent?

By Mr. Jones:

Well as I pointed out before, the only instance in which the question of whether we would defer to a State's ruling came up was in the South Carolina case. It came up again in a somewhat revised fact situation in a submission involving integration in Richmond, Virginia, but there too the fact situation was different and we did not, the end result was not the same that we did not object on the basis of that policy. The policy insofar as that in the policy arose primarily to avoid the conflict that would come where an administrative agency or a member of the Executive Branch I should say, because we are not in fact an administrative agency, would find itself in effect reviewing what a Federal District Court has already decided because Fifteenth Amendment issues are the basis for the actions under Section 5 as well as in litigation in which Fifteenth Amendment issues have been raised. In this particular case, in the Connor case, that conflict never arose because no [28] submission was ever made to the Attorney General. Therefore when the litigation reached the stage of being appealed to the Supreme Court we felt completely free to file a paper in the Supreme Court indicating what the position of the United States would be on that very issue because that issue of deference has not specifically ever been decided by the Supreme Court.

By Judge Coleman:

But y'all didn't stop it, y'all didn't stop it, y'all didn't stop it in the papers you filed in the Supreme Court, you

didn't stop us saying this should have been and must have been submitted to the Attorney General for it to have been valid, you went on then and joined forces with the plaintiffs on some kind of an informal basis of which you had not previously informed our Court, saying that the Supreme Court ought to do this, they ought to enjoin the election, they ought to order this and they ought to order that and ought to order the other, none of which the Supreme Court did. They didn't accept your invitation to do all those things.

BY MR. JONES:

We——

BY JUDGE COLEMAN:

I think that's highly significant in this case that the [29] Supreme Court thought that you were right, that since it originated with the legislature it had to be submitted to the Attorney General, but unless the Supreme Court picked up what the Mississippi Attorney General filed they reached that conclusion in ignorance of the fact that there had been retained jurisdiction in this case all the way through it. We had said in 1966 that we retained jurisdiction to examine the constitutionality of all legislative reapportionment under the 1960 census and under the 1970 census, and what we did in 1971 after the 1970 census was in pursuance of this retained jurisdiction, so although we heard these cases and we've spent about two weeks trying to draft an opinion that would cover all phases of the case then it was taken up to the Supreme Court as if we had just started out on an initial journey, that we were not exercising jurisdiction which had been retained ever since 1966, and I just wonder what the Supreme Court might have thought about it if they had had that in mind, they had known that. Our jurisdiction has been ousted by this maneuver and by this practice or maybe it hasn't been ousted. If the District Courts can

go on and decide Section 5 issues after the Attorney General has refused to approve a plan like the South Carolina Courts did maybe his opinion is only advisory [30] then until the Courts can pass on it and I guess that is what it amounts too because whatever we say now doesn't have to be sent back to you, does it?

BY MR. JONES:

If the Court formulated, that's right, it would fall within the 1971 Connor principle.

BY JUDGE COLEMAN:

That's right.

BY MR. JONES:

And I might add, Your Honor, that that 1971 principle that came out of this litigation, Connor, where the Supreme Court said a decree of the District Court is not within the perview of Section 5, that is, that really, we found it necessary to devise some policy of deference of the nature that we have been describing here this morning although it's informal and it is not publicized, Judge Russell.

BY JUDGE COLEMAN:

Well now suppose it is——

BY MR. JONES:

(Interposing) It's not a formulated rule——

BY JUDGE COLEMAN:

(Continuing) Suppose it is informal, you are seeking to win a case now and before another Court of Appeals on the proposition that that is your policy, aren't [31] you, you say that the case is still pending and you told that Court, and you are certainly bound by what you told the Court, that you do have such a policy.

By Mr. Jones:

That is correct, Your Honor, but I might add that happened several years ago in 1973, I believe.

By Judge Coleman:

Have you moved to dismiss the appeal in the District Court of the District of Columbia because you no longer have such a policy?

By Mr. Jones:

Since the Supreme Court ruled on June 5th in this case setting forth the principles that it did we have under active consideration now the position that we have taken on this policy of deference and well might be that that will happen, I don't know because the Solicitor General's office has to prove whatever actions we take there. That is something that is being actively considered now.

By Judge Coleman:

May I ask you this. I appreciate the fact that the Department of Justice has a right to move to intervene in these cases and you moved to intervene in this one and we very promptly granted your intervention and I think you remember what I said when we had our pretrial conference here last Friday, it was Thursday, that

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[40] [By Judge Coleman] lines. All of us who know much geography, know that all the south side of Virginia south of the James is a predominately generally black area.

By Mr. Jones:

That's right, Your Honor.

By Judge Coleman:

And of course that part over in the valley and down southwest of Virginia around Bristol and that area is predominately white. And I suppose that is up, right up against Washington, although I don't know. I once lived in Washington for four years but it's been a long time.

By Mr. Jones:

That's heavily white.

By Judge Coleman:

Now if Virginia could preserve the integrity of its county lines which has certainly been the undoubted history of the State of Mississippi, I challenge anybody by anything except the purest sophistry to suggest that Mississippi has ever operated on anything except the preservation of its county integrity, county boundaries, from the Constitution of 1832 right on down to date including the reconstruction convention of 1868. Now why wouldn't it be possible if Virginia could do it for it to be done in the [41] State of Mississippi to reapportion the legislature in such a way as to avoid the dilution of the black vote without at the same time destroying the only basis upon which state government rests in this state, to-wit: the counties.

By Mr. Jones:

Well we believe, Your Honor, that to some extent, and I emphasize that phrase, to some extent the State can do that and the possible alternative that we have suggested demonstrates that. Some of the boundary lines fall, the county boundary lines fall under our proposals and we think that that is necessary. In Virginia we looked at the plan, it was submitted to us and we looked at it and evaluated it and we did not find that the principle observing county lines fragmented black concentrations were grouped in such a way that they submerged substantial black concentrations into larger white pools of votes and those type features which we did find to exist in the Mississippi plan. We think that the constitutional pro-

vision, the Fifteenth Amendment, which really involves fundamental constitutional rights demands that the "rational state policy" which the Courts have talked about in terms of Fourteenth Amendment considerations cannot, well the Fifteenth Amendment requires that that

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[80] [By Judge Coleman] ble dilution of the black voting strength. We can get the population figures by beats under the way that they conducted the census in 1970, but the only thing the beats now have been changed. Maybe we could get to the court orders that were entered in each case, a lot of it was probably done by agreement, a lot of it maybe you expressed no objection to, they have to refer those things to the Department of Justice. There might be some way you could ferret out the population of various beats. You mentioned in your plan, I just got a quick look at one page of it this morning after you sent it around, and you are still mentioning census enumeration districts, census enumeration tracts, and I think in the present contacts of affairs in Mississippi with permanent voter registration and with the precinct lines being what they are it's just totally unrealistic to think we could use them in the 1975 election or maybe ever when you get right down to it. So what Mr. Parker proposed is that we stop all elections until these insuperable difficulties are surmounted which would have the effect of freezing in office everybody who is now in office as a Senator or Representative unless they quit or unless they're running for some other job as many of them are.

[81] By Mr. Jones:

We have, Your Honor, looked at a good number of these reapportionment plans both from the state level and from the county and subdistrict level and traditionally, routinely, census enumeration districts have been used as the building blocks for reapportionment districts primarily

because of that figure being the most recent official and reliable statistic on which to rely. As Your Honor mentioned, the supervisors' districts wouldn't be appropriate because the census enumeration, I mean the census counts for those in so many instances would not be for the currently existing supervisors' beats. The problem of using or the matter of using enumeration districts as a building block is a complicated one, no doubt about it, but so is the process of reapportionment itself, and we have found that it has not been an insurmountable task to in many instances to, well first of all precinct lines have to be redrawn to conform to new district boundary lines to meet one person one vote requirements. We have——

By Judge Russell:

To meet what?

By Mr. Jones:

To meet the one person one vote requirements. We have

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[169] [By Judge Coleman] Senator itself, but Quitman, Tate and Tunica right there next to it has one.

By Mr. Parker:

If I could, simplifying this a little bit let me simply say that the Department of Justice calculated the percent black voting age population for each of the districts under the Valinsky Plan and this would be one measure of determining whether the present plan has the effect of dilution, and I simply see, the Valinsky Plan as the Court will recall, the districts were drawn, the lines and the boundaries were selected more or less randomly. In other words this was a color blind plan drawn without any particular intent of maximizing or diluting black voting strength. In District 8 which is all of Coahoma, supervisor District 4 of Tunica and E D's 1 and 8 of Bolivar County has a 59.17 percent black voting age population.

BY JUDGE COLEMAN:

Elect one, two senators?

BY MR. PARKER:

Elect a single Senator, all of these in the Valinsky Plan in single member districts.

BY JUDGE COLEMAN:

Well, the trouble about his plan is as I recall it, he fractures about 63 county lines out of 82 and [170] while that may come to pass out of stern necessity in some instances it certainly is contrary to the public policy of the State of Mississippi and it certainly shouldn't be done unless it's absolutely unavoidably required to avoid unconstitutional dilution of the black voting power, so that's just the thing about all that. It would just cut the State of Mississippi which has no base whatever for its government except the counties up into all kinds of little Balkan hedgemonies that I don't think we're constitutionally required to do and which we're not going to do except where we think we're required to, the Supreme Court may tell us later on we have to, if so we'll do what they say. But what I'm trying to do is to see what we can do about eliminating all of this by disturbing as few county lines as we can instead of just saying okay, there's some problems in some parts of the State, therefore we'll just chop the whole thing to smithereens.

BY MR. PARKER:

I think, Your Honor, that the Justice Department Plan which is called the modified State plan is an effort to do that and perhaps Mr. Jones or Mr. Johnson can tell you more about that, because their plan leaves the 1975 legislative plan intact in those areas.

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[172] [By Judge Coleman] I know but I want to get to the racial discriminatory part of it first.

BY MR. PARKER:

Okay.

BY JUDGE COLEMAN:

Because that's the, that is the somewhat, well in the issue this litigation is new, it wasn't mentioned, it didn't come up when we set up the 1967 plan and it didn't come up when we set up the 1971 plan for the simple reason that we didn't look at the black population of any county or the white population either, we just went to one man one vote and that was it and nobody claimed that there had been any racial minimization or cancelation. Now then of course it's injected into this litigation at this time and I think we've got to cross that bridge before we get to one man one vote. Type 3 fragmentation, are there any places you wanted to mention?

BY MR. PARKER:

Yes, Your Honor. It has been our contention that the supervisors districts of Hinds County is drawn by the 1973 Board plan typified what we refer to as type 3 dilution in the sense that the area of heaviest black concentration within Hinds County which is in the city of Jackson is fragmented and dispersed by the

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[191] [By Judge Coleman] All right, thank you. Mr. Parker.

BY MR. PARKER:

We agree with that formulation. I don't think for purposes of measuring dillution we can compare what the Legislature did in '75 with what the Legislature did in '71 or any other prior Court Order plan because in the history of Mississippi in this century, only one black legislator has ever been elected to the Mississippi Legislature

so we can't point, at least within this century, to some golden era in the past in which there was perfect equality in terms of legislative representative and somehow that was taken away. This standard for measuring dilution was shown very well by Mr. Jones comparing what has been done to what might be. The basis or the starting point for measuring dilution or cancellation is always looking at the districts in terms of the population, voting age population, that type of measurement. In other words, the voting strength in the standard by which that dilution and cancellation is to be made.

BY JUDGE COLEMAN:

All right, Mr. Summer.

BY MR. SUMMER:

Well, sir, as I understand the answer from Mr. Jones and from Mr. Parker using a standard as to what has

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[200] [By Judge Coleman] We won't get rid of the case on that. We'll continue to hold on to it and give it the attention it ought to have from A to Z.

BY MR. SUMMER:

But in so much as to my recommendation as to the starting point to be the decisions that this Court has already made and the conclusions that they have found, and the burden would be on the Plaintiff, of course, to see that that was erroneous.

BY JUDGE COLEMAN:

You Gentlemen have told us quite plainly where you think the dilution has occurred. When can y'all proceed to an evidentiary hearing to establish that it has. How soon can you do that?

BY MR. PARKER:

Your Honor, speaking for the Plaintiffs, we do not request a further evidentiary hearing, but we would rely on the record already made in this case at the hearing on May 7. We rest on that.

BY JUDGE COLEMAN:

All right, you are free to do that if you like. Let the record show he had an opportunity to produce any more if he wanted to. Let's hear from the Department of Justice.

BY MR. JOHNSON:

[201] Well, as Your Honor knows, we haven't been in this litigation very long, and I'm sure that there's much, much in the record of which we are not aware. It might well be that we can reach the same determination after we've had an opportunity to fully evaluate the records, so if we could have, I guess maybe a week's time, to do that we could give a more meaningful and definitive answer.

BY JUDGE COLEMAN:

All right. The Attorney General wants to stand on the record as it is, Mr. Parker wants to stand on the record as it is, and if you would like to take a little bit to give serious consideration as to whether you want to stand on it as is. If everybody is willing to stand on the record as is, we will decide it on the record as is.

BY MR. JOHNSON:

Well, we'll stand on the record as it is. I wasn't aware of the Attorney General's position being that explicit, but if that is his position, then certainly we wouldn't want to be the ones to delay at this late date a determination by this Court.

BY JUDGE COLEMAN:

Well, we asked the Attorney General of Mississippi to distinguish him from his Attorney General counterpart ——

[202] BY MR. SUMMER:

(Interposing) Let me make it clear to the Court that we are perfectly willing to stand on the record as it it.

BY JUDGE COLEMAN:

As it is.

BY MR. JOHNSON:

And we are, too, Your Honor.

BY JUDGE COLEMAN:

Okay. Let the records show that is has been stipulated by all the parties to this litigation that they are willing to stand on the record as it exists on the question of whether or not there has been an unconstitional minimization or cancellation of black voting strength as to the House of Representatives in the counties which have been named to the Court by Counsel without the necessity of repeating them here. All right, is there anything further from either side in this case at this time.

BY MR. SUMMER:

Excuse me, if the Court please, may I confer just a minute.

BY JUDGE COLEMAN:

Did I omit Senate? I meant House of Representatives and Senate.

Defendants' Objections to the June 25, 1975, Court-Ordered Legislative Districts

[TITLE OMITTED IN PRINTING]

[FILED JULY 7, 1975]

Pursuant to the June 25, 1975, order of this Court, defendants state the following objections, to-wit:

I.

Defendants have no objection to the temporary legislative districts for Harrison County, Mississippi.

II.

Defendants have no objection to the temporary legislative district for Jackson County except as it results in the removal of George County from said district.

III.

Defendants object to the temporary legislative district composed of George County, Beat 4 of Greene County and Beat 5 of Stone County.

IV.

Defendants object to the formation of temporary single-member districts for Hinds County.

In support hereof, defendants would state as follows, to-wit:

1. The fracturing of the county lines of Greene and Stone Counties is unnecessary in that by allowing George and Jackson Counties to elect a Representative designated Post No. 6 and requiring that said Representative be a resident of George County, while Jackson County elects

five Representatives by its respective supervisors' districts, District 46 would substantially comply with the one-person, one-vote rule announced in *Reynolds* v. *Sims;* and while the Representative elected to Post No. 6 would represent the entire two-county district, George County would have effective representation in that the representative would be a resident of that county. As a temporary measure, this would be far preferable to the creation of the new district which breaks county lines.

2. The creation of District 47 for the election of one Representative whereby the county lines of Greene and Stone Counties are fractured, drastically dilutes the voting strength of said counties in the following manner:

(a) *Greene County*—By placing Beat 4 of Greene County [population 1,709] with George County [population 12,459] together with Beat 5 of Stone County [population 1,620] results in a drastic dilution of the influence of the residents of Beat 4 of Greene County on the outcome of any legislative election in District 47. Further, by removing Beat 4 from Greene County to create the new legislative district, Beats 1, 2, 3 and 5 of Greene County with a population of only 6,836 are now paired with Perry County with a population of 9,065 for the election of one Representative, where heretofore Greene County's population was only 530 less than that of Perry County. The above arrangement has resulted in a drastic dilution of the voting strength of the people of Greene County and serves to effectively deny said individuals of effective representation.

Attached hereto as Appendix "A" is a copy of a Resolution of the Board of Supervisors of Greene County objecting to the fragmentation of said county and requesting that the Court review its decision thereon and alter such decision to more adequately provide for Greene County.

(b) *Stone County*—By placing Beat 5 of Stone County [population 1,620] with George County [population 12,459]

together with Beat 4 of Greene County [population 1,709] results in a drastic dilution of the influence of the residents of Beat 5 of Stone County on the outcome of any legislative election in District 47. Further, by removing Beat 5 from Stone County to create the new legislative district, Beats 1, 2, 3 and 4 of Stone County, with a population of only 6,480, are now paired with Pearl River County, with a population of 27,802, for the election of two Representatives where heretofore Stone County had 1,620 more individuals in District 43. The above arrangement has resulted in a drastic dilution of the voting strength of the people of Stone County and serves to effectively deny said individuals of effective representation.

Attached hereto as Appendix "B" is a copy of a Resolution of the Board of Supervisors of Stone County objecting to the fragmentation of said county and requesting that the Court review its decision thereon and alter such decision to more adequately provide for Stone County.

3. Defendants hereby readopt and reaffirm their position regarding the formation of single-member districts for Hinds County, and again state unto the Court that as a temporary measure the Court should require small multi-member districts for the election of the twelve Representatives from Hinds County, with each supervisors' district electing two Representatives and with two Representatives being elected from the county at large; and further, that the five Senators should likewise be required to be elected from the county at large. As a temporary measure, this procedure greatly outweighs the creation of single-member districts for Hinds County, especially in view of the impending elections.

WHEREFORE, defendants request this Court to review its decision in regard to the fragmentation of the Counties of Stone and Greene, and further, that the Court review its decision as to the creation of single-member districts

for Hinds County, and that this Court alter its decision with respect thereto as hereinabove set forth.

Respectfully submitted,

A. F. Summer
Attorney General
State of Mississippi

Giles W. Bryant
Special Assistant Attorney General

William A. Allain
Special Counsel

/s/ By: A. F. Summer
A. F. Summer

[Certificate of Service Omitted in Printing]

Response to Motion to Alter or Amend Judgment

[Title Omitted in Printing]

[Filed July 23, 1975]

This is another chapter in the continuing saga of reapportionment in Mississippi. Although Plaintiffs entitled their Motion as one to "Alter or Amend Judgment," it is nothing more than an attempt to orchestrate an old refrain. Plaintiffs, using as their trojan horse this Motion To Alter Or Amend Judgment, have renewed their constitutional attack upon the temporary apportionment plan devised by this Court. As in the past, the primary weapon in the Plaintiffs' arsenal is "dilution of the black vote." Plaintiffs' previous attack was repelled because Plaintiffs' charge of unconstitutional dilution of the black vote was not substantiated by the proof presented.

Plaintiffs continue to assert that the joining together of a "black county" with a "white county" is in and of itself sufficient proof of unconstitutional dilution of the black vote. This proposition is wide of the mark. No Court to this date has even placed its imprimatur upon such legal reasoning.

As recently as July 7, 1975, the United States Court of Appeals for this Circuit in *Wallace* v. *House*, No. 74-2654, analyzed the many cases wherein the question of dilution of the black vote was at issue and distilled therefrom that "the existence of a black population majority [is] not dispositive of the dilution issue, for it is not population but access to the political process that determines whether an interest group enjoys the full vigor of its political rights." P. 6298. The Court noted that the Supreme Court in *Whitcomb* v. *Chavis*, 403 U.S. 124 and *White* v. *Regester*, 412 U.S. 755 admonished that a Court must look beyond mere population figures and that any decision in regard to uncon-

stitutional dilution of black voter strength must be determined from "the totality of circumstances." The Circuit Court placed beyond cavil "that no racial or political group has a constitutional right to be represented in the legislature in proportion to its numbers, so it follows that no such group is constitutionally entitled to an apportionment structure designed to maximize its political advantages." (Cited cases omitted) Neither does any voter or group of voters have a constitutional right to be included within an electoral district that is especially favorable to the interests of one's own group, or to be excluded from a district that is dominated by some other group." P. 6297.

The death knell to Plaintiffs' position commenced when Judge Goldberg, writing for the Court, stated:

> "The critical question under *Chavis* and *Regester* is not whether the challenged political system has a demonstrably adverse effect on the political fortunes of a particular group, but whether the effect is invidiously discriminatory, that is, fundamentally unfair."

Continuing, the author of the opinion wrote that:

> "This Court has decided several dilution cases in recent years, and . . . we have consistently adhered to the proposition that 'access to the political process and not population (is) the barometer of dilution of minority voting strength.' " P. 6297.

Defendants concede that whenever you join together a "black county" and a "white county" the voting strength of the minority race, be it white or be it black, will be "diluted" but such dilution in and of itself does not breach the constitutional fortress surrounding such combination. To successfully storm such fortress, Plaintiffs have the burden of bringing forward much heavier artillery.

This Circuit in *Wallace* relied heavily upon the language of the *Chavis* Court to the effect that to prove constitution-

ally impermissible dilution of black voting strength the charging party must show that blacks

> "had less opportunity than did other [citizens] to participate in the political processes and to elect legislators of their choice. We have discovered nothing in the record . . . indicating that [blacks] were not allowed to register to vote, to choose the political party they desired to support, to participate in its affairs or to be equally represented on those occasions when legislative candidates were chosen. Nor did the evidence . . . show . . . that [blacks] were regularly excluded from the slates of both major parties, thus denying them the chance of occupying legislative seats." 403 U.S. at 149-50, 91 S.Ct. at 1872, 29 L.Ed.2d at 379-80.

The position of the Plaintiffs is at total war with all previous decisions of the Federal Courts. It appears to be Plaintiffs' position that principles of constitutional law come from repetition rather than sound reasoning and determinations. The Supreme Court of the United States and the Circuit Court of Appeals for this Circuit have made clear to all those who want to see that mere population is not the polestar which guides a court in its determination in regard to unconstitutional dilution of the voting strength of a minority group.

Of some moment and of great interest is the case of *Van Cleave* v. *The Town of Gibsland, Louisiana,* 380 F. Supp. 135, cited with approval in *Wallace,* supra. This action was commenced by a white voter of Gibsland in behalf of all other white voters of that town, asserting that the voting strength of such white voters was diluted because the town aldermen were elected at-large. The Plaintiff made the same argument in that action that is now being made by the Plaintiffs in the action sub judice. The District Court found for the Defendants after determining that the Plain-

tiff had not carried his burden of proving that he was denied access to the political processes. The Court noted that "the plaintiff testified that he was not denied access to the process of slating candidates. "P. 138. This finding strikes a familiar cord in the present litigation wherein the witnesses presented by the Plaintiffs all testified that they knew of no one who had been "denied access to the political processes in the State of Mississippi" except for one or two isolated instances. In fact, the Plaintiff Kirksey testified that he had always freely participated in the political processes and is presently running for Governor of the State of Mississippi. The Town of Gibsland Court took note of the fact that many white voters did not turn out to vote in the elections and commented that "perhaps the plaintiff seeks to slay the wrong dragon." P. 138.

The temporary apportionment plan ordered by this Court for the 1975 legislative elections has been battle tested and Plaintiffs failed to establish even a beachhead when judged by the standards enunciated in *Chavis,* supra, *Regester,* supra, *Wallace,* supra and *Dallas County* v. *Reese,* —— U.S. ——, 44 L.Ed.2d 312. To the contrary, this Court applying the dictates of the United States Supreme Court made a finding and determination that black voters in Mississippi were not denied participation in the election process and therefore the black voting strength was not minimized or cancelled out. To this end, the Court found the Plaintiffs and Plaintiff-Intervenor had failed to prove that the 1975 legislative plan or the Court ordered temporary plan diluted the black voting strength unconstitutionally. For this reason we object to Plaintiffs' request that this Court establish a specific date for special legislative elections to be held prior to the next scheduled 1979 legislative elections or more specifically in 1976.

Plaintiffs, by this motion, also attempt to relitigate their malapportionment claim. The statistics presented with the

motion add nothing new to this action and were before the Court when the Court devised its temporary plan for the 1975 legislative elections. With these figures before it the Court determined that the variances were within constitutional tolerance.

This Court has already established by its Order of July 11, 1975, a schedule by which all parties must submit reapportionment plans to this Court. Defendants suggest that there is no need for this Court at this time to establish a specific date upon which it will render a decision in regard to a permanent reapportionment plan for the Mississippi Legislature.

Further, these Defendants would suggest to the Court that the date for the submission of the Defendants' plans for reapportionment of the Legislature should be changed so that such plans would not have to be submitted any earlier than April 1, 1976. This request of the Defendants is based upon the fact that these Defendants are without authority under the Laws of the State of Mississippi to formulate a legislative reapportionment plan sole authority for such formulation being reposed by the Mississippi Constitution in the Legislature itself. The requested change of submission date would allow time for the 1976 Legislature with the advice of the Attorney General to formulate the plans required by the Court Order.

In regard to the request that the Court delete that portion of the Court's Order appointing Mr. Hoyt T. Holland, Jr., as a special master of the Court in this case, Defendants submit to the Court that the Court is the best judge of the person it will select to serve as its special master and further submit that the reasons stated by the Plaintiffs for such deletion are not proper and valid.

Defendants submit that Plaintiffs are not entitled to taxable cost, expenses of litigation nor any attorney fees.

Respectfuly submitted,

A. F. SUMMER,
ATTORNEY GENERAL

GILES W. BRYANT,
SPECIAL ASSISTANT ATTORNEY GENERAL

WILLIAM A. ALLAIN,
SPECIAL COUNSEL

/s/ By: A. F. Summer
A. F. SUMMER

[CERTIFICATE OF SERVICE OMITTED IN PRINTING]

Submission Pursuant to Order

[TITLE OMITTED IN PRINTING]

[FILED OCTOBER 9, 1975]

Three times the Supreme Court of the United States has viewed the legislative districts of the Mississippi Legislature as they substantially exist at the present time. Three times the Supreme Court has refused to declare that these legislative districts were unconstitutional. In 1971 this Court fashioned a reapportionment plan for the Mississippi Legislature without regard to race. The Supreme Court of the United States, in looking at the 1971 court-ordered plan, acknowledged this Court's reluctance in creating "large" multi-member districts in Hinds, Harrison and Jackson Counties.

Although plaintiffs sought a decision by the Supreme Court that the legislative districts of this 1971 plan were unconstitutional, the Supreme Court refused to so hold.

After analyzing the decisions of the Supreme Court of the United States setting forth guidelines on legislative reapportionment, the Mississippi Legislature in 1973 enacted a reapportionment plan which substantially conformed to the plan fashioned by this Court in 1971.

Again in 1975 the Legislature acted. It reduced the "large" multi--member districts in Hinds and Harrison Counties, where twelve representatives in Hinds and seven representatives in Harrison were elected by the respective counties at large. The 1975 legislative enactments reduced these "large" multi-member districts—which had concerned this Court as well as the Supreme Court of the United States—by providing that the twelve representatives from Hinds County be elected by supervisors districts, with each supervisor district electing two repre-

sentatives. The Legislature further provided that the remaining two representatives from Hinds County were to be elected from the county at large. Likewise, the Legislature provided that the seven representatives from Harrison County were to be elected by supervisors districts, with each supervisor district electing a representative. The two remaining representatives from Harrison County were to be elected at large. Other minor modifications were made to eliminate "large" multi-member districts.

This action taken by the Mississippi Legislature was a deliberate effort to bring its reapportionment plan within the guidelines announced by this Court and the Supreme Court of the United States. Thus, the Legislature sought to eliminate all "large" multi-member districts and at the same time maintain the integrity of the counties.

On May 19, 1975, following extensive hearings, this Court, as expressed in a 68-page opinion, clearly analyzed the prevailing law, scrutinized each legislative district, and, in finding that blacks in the State of Mississippi have full access to all phases of the election processes, concluded that the legislative districts were constitutionally apportioned.

Again the Supreme Court had another opportunity to view these legislative districts with the modifications in Hinds, Harrison and Jackson Counties. Again the Supreme Court refused to declare that these districts were unconstitutionally apportioned. The plaintiffs asked that the Supreme Court itself order the immediate implementation of a statewide single-member district reapportionment plan. The Supreme Court denied plaintiffs' requested relief.

The Supreme Court in no way intimated that this plan was unconstitutional. Throughout the entire history of this litigation, no court has ever found the legislative districts as they substantially exist at the present to be unconstitutional.

Plaintiffs have asserted throughout this litigation that the joining together of a "black county" with a "white county" is in and of itself sufficient proof of unconstitutional dilution of the black vote. This proposition is wide of the mark. No court to this date has ever placed its imprimatur upon such legal reasoning.

As recently as July 7, 1975, the United States Court of Appeals for this Circuit in *Wallace* v. *House,* No. 74-2654, analyzed the many cases wherein the question of dilution of the black vote was at issue and distilled therefrom that

> **"the existence of a black population majority [is] not dispositive of the dilution issue, for it is not population but access to the political process that determines whether an interest group enjoys the full vigor of its political rights." p. 6298**

The Court noted that the Supreme Court in *Whitcomb* v. *Chavis,* 403 U.S. 124, and *White* v. *Regester,* 412 U.S. 755, admonished that a court must look beyond mere population figures and that any decision in regard to unconstitutional dilution of black voter strength must be determined from "the totality of circumstances." The Circuit Court placed beyond cavil that

> **"no racial or political group has a constitutional right to be represented in the legislature in proportion to its numbers, so it follows that no such group is constitutionally entitled to an apportionment structure designed to maximize its political advantages. [Cited cases omitted] Neither does any voter or group of voters have a constitutional right to be included within an electoral district that is especially favorable to the interests of one's own group, or to be excluded from a district that is dominated by some other group." p. 6297**

The death knell to plaintiffs' position commenced when Judge Goldberg, writing for the Court, stated:

> "The critical question under *Chavis* and *Regester* is not whether the challenged political system has a demonstrably adverse effect on the political fortunes of a particular group, but whether the effect is invidiously discriminatory, that is, fundamentally unfair."

Continuing, the author of the opinion wrote that:

> "This Court has decided several dilution cases in recent years, and . . . we have consistently adhered to the proposition that 'access to the political process and not population (is) the barometer of dilution of minority voting strength.' " p. 6297

Defendants concede that whenever you join together a "black county" and a "white county," the voting strength of the minority race, be it white or be it black, will be "diluted", but such dilution in and of itself does not breach the constitutional fortress surrounding such combination. To successfully storm such fortress, plaintiffs have the burden of bringing forward much heavier artillery.

This Circuit in *Wallace* relied heavily upon the language of the *Chavis* Court to the effect that to prove constitutionally impermissible dilution of black voting strength, the charging party must show that blacks

> "had less opportunity than did other [citizens] to participate in the political processes and to elect legislators of their choice. We have discovered nothing in the record . . . indicating that [blacks] were not allowed to register to vote, to choose the political party they desired to support, to participate in its affairs or to be equally represented on those occasions when legislative candidates were chosen. Nor did the evidence . . . show

> . . . that [blacks] were regularly excluded from the slates of both major parties, thus denying them the chance of occupying legislative seats." 403 U.S. at 149-50, 91 S.Ct. at 1872, 29 L.Ed.2d at 379-80.

The position of the plaintiffs is at total war with all previous decisions of the federal courts. It appears to be plaintiffs' position that principles of constitutional law come from repetition rather than sound reasoning and determinations. The Supreme Court of the United States and the Circuit Court of Appeals for this Circuit have made clear to all those who want to see that mere population is not the polestar which guides a court in its determination in regard to unconstitutional dilution of the voting strength of a minority group.

The plan fashioned by this Court in 1971 as modified by the Legislature in 1975 does not have the purpose or effect of diluting black voting strength. Further, the variances brought about by this plan have heretofore been found to be within constitutional tolerance.

The people of the State of Mississippi, both black and white, are entitled to know in which legislative district they reside and that such district will not change every four years or even every year. To this end, this controversy should end.

In view of the foregoing, defendants hereby submit as their proposed reapportionment plan to be considered by the Court in the formulation of a "permanent" court-ordered plan, the reapportionment plan as fashioned by this Court in 1971, as modified by the Legislature in 1975, which plan maintains the integrity of the counties of the State of Mississippi. Said plan is part of the record in this cause and is incorporated herein by reference. As an alternative plan, defendants hereby submit and incorporate by reference the reapportionment plan as created by this

Court's order of July 11, 1975, which fractures only a minimum of county lines.

Respectfully submitted,

A. F. SUMMER
ATTORNEY GENERAL
STATE OF MISSISSIPPI

GILES W. BRYANT
SPECIAL ASSISTANT ATTORNEY GENERAL

WILLIAM A. ALLAIN
SPECIAL COUNSEL

/s/ By: A. F. Summer
A. F. SUMMER

[From Transcript of June 15, 1976 Proceedings]

[10] [By Judge Coleman] bound to be adopted, but there has been a motion in this case to disqualify the special master, which has been denied, which has been overruled. Whatever comes out of this Court will go to the Supreme Court of the United States, if anybody wishes to take it there, as the act of this Court, not as something somebody cooked up off in the corner.

We think it is in order for us to point out that we recognize the following policies which have to be taken into consideration in the formulation of the permanent plan of legislative reapportionment.

One. Mississippi has always had a system of permanent registration of voters. Once a voter is registered as a resident of any voting precinct he remains registered there until he moves away or dies. Obviously, the smallest governmental unit in the Mississippi electoral scheme is the voting precinct. Unless this is kept in mind elections could not be effectively conducted. The bureau of the census does not take the census by precincts as it did in former years. Therefore, we do not have specific population figures for voting precincts. This poses a problem in connection with figuring actual population figures in any one precinct. We think, however, that there are reasonably dependable ways by which this problem can be overcome without doing violence to the one man—one vote rule, and when that permanent plan emerges, that plan will, of course, appear.

[11] Second. It has been developed in prior opinions of this Court, from its admission into the Union until the present time Mississippi has had a well-defined policy, articulated in its constitutions, of not fracturing county lines in the formulation of legislative districts. The basis of this policy is that the county is the fundamental unit of state government. All state law in Mississippi—criminal, civil, and administrative—has uniformly rested on that

foundation. We think this policy has to yield to the requirements of the Constitution of the United States, but only in those instances wherein it would cause a conflict with the Constitution. Therefore, the permanent legislative reapportionment plan will fracture county lines only in those instances where there is no other way to avoid a violation of the federal Constitution. If there is no other way to avoid a violation of the federal Constitution the lines will be fractured, but if there are reasonable ways by which it can be avoided, then we are not going to set out—we don't think the Supreme Court has given us a warrant to set out about violating the policy, the well-defined constitutional and legislative policy of the state.

Now in like manner Mississippi has always adhered to the policy of using multi-member districts for the selection of legislators. This policy in and of itself does not violate the federal Constitution, except possibly in [12] large multi-member districts.

Now it is also true that in several instances Mississippi has had the policy of subdividing counties for the election of legislators, such as in Bolivar, Carroll, Chickasaw, and Hinds that come to mind immediately without researching them all. Consequently, subdivisions within a county in the permanent legislative plan would not offend state policy and may be freely utilized where otherwise appropriate.

We conclude with the following: The language of the decision of May 19, 1976 (slip opinion at 3) indicates that any court ordered reapportionment should comply with the Supreme Court decisions in *Mahan* v. *Howell, Conner* v. *Williams,* and *Chapman* v. *Meier.*

It seems to us that *Mahan* v. *Howell* stands for the proposition that in legislative reapportionment a state does not violate the equal protection clause when it pursues a rational objective of preserving the integrity of its political subdivision lines.

Conner v. *Williams* says that "Single-member districts are preferable to large multi-member districts as a general matter."

Chapman v. *Meier* asserted that the enforcement of court ordered reapportionment plans is based on the state's constitution, state statutes, state election laws; that a

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[15] [By Judge Coleman] the beginning of statehood, by constitution and statute, Mississippi has always provided that every county should be entitled to at least one member to the House of Representatives. Since the county is the basic unit of government, the reason for this policy is plain. Of course senators have not been restricted to one county. There is no policy impediment to putting the senate strictly on the basis of population norms. Because of our adherence to population norms, however, this Court has deprived a number of counties of the one representative heretofore guaranteed them by the Mississippi Constitution. The results of this has been that many predominately Black counties, like Noxubee, Kemper, Claiborne, and Jefferson, which join predominately White counties, have been compelled to share the election of representatives with those predominately White counties. In other words, the application of one man—one vote has denied these counties the right of one representative guaranteed to them by the Mississippi Constitution of 1890 and brought forward in the reapportionment amendment of 1962.

Unfortunately, however, this is unavoidable, I may say to my regret, but the population norm for a member of the state House of Representatives is 18,171. Seven counties have less than half that amount. Issaquena County has only 2,737 people. Thus to allocate at least one representative to each county would be "a total subversion of [16] the equal population principle in that legislative body," quoting from *Reynolds* v. *Sims,* 377 U.S. 533.

This does not mean, however, that we should ignore the general right of a county to one representative if it has enough people to avoid subverting the equal population principle. I think clearly that's what *Reynolds* v. *Sims* teaches. It went on to announce all of the many reasons why people should not be deprived of a representative if the state constitution allowed them one, but said, of course, it just couldn't be carried to the extent of allowing it to totally subvert the one man-one vote principle. Obviously if we were to allocate one representative to Issaquena with 2,730 people when 18,000 are required on the state-wide norm, if we were to do it in Claiborne, Jefferson, and Noxubee and Kemper, which would give us a quick, easy solution to our problems, we would at once meet the argument we had just subverted the one man-one vote principle, and there we'd be again.

We also note that since this Court met last the Supreme Court has decided the *East Carroll Parish School Board* v. *Marshall. East Carroll,* footnote 6, held that Section 5 of the voting rights act does not control court ordered legislative reapportionment plans. Therefore, in this case we look to constitutional principles only. We are not to be concerned with the voting rights act, as I

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[23] [By Mr. Parker] be able to expedite that.

JUDGE COLEMAN:

We will give you that right to confer, but do you have any objection to raise to our abandoning use of the 1973 population figures when it's realized there's going to have to be subdividing of counties?

MR. PARKER:

No, Your Honor. That does conform to our position, and that's what we were going to urge upon the Court.

JUDGE COLEMAN:

Very well. I don't think you need to confer about it. If you think you need to you can, but as we have said, we are abandoning that idea. We thought it might be a good one. We saw these figures for the various counties. We realize the terrible turnover that took place between '60 and '70, and after '70 again, and we thought we might minimize it some by using the later figures, but the trouble is we don't have enough and don't have adequate figures, so we have to go back to 1970.

The Court will stand in recess for five minutes.

(Recess)

JUDGE COLEMAN:

Be seated. Mr. Parker?

MR. PARKER:

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[36]

JUDGE COLEMAN:

Let me ask you this: I've been living with this case a long time. I've spent a great deal more time on it I dare say than a lot of people who have been talking about foot dragging, but in any event, I just have one example I might ask you about. Bolivar County is a majority Black county; has three representatives. Suppose this Court divided this county into three single-member districts. The three men who are in the legislature were elected by the same people who would be electing people from the single-member districts. What substantial right would be defeated by declining a special election in that case, or what constitutional right would be guaranteed by ordering that they run over again? That's just one example that comes to mind very quickly. Boliver County meets the population norms very nicely. It's a terrifically Black majority. The Black people

of the county, like all other citizens, participate in the election of the three representatives. Why should they have to have another election?

MR. JOHNSON:

I believe that goes directly to the issue in this case concerning the effect of a multi-member district in a Black area compared to the effect of a single-member district. The position of the United States has been, and still [37] is, that multi-member districts dilute the Black vote.

JUDGE COLEMAN:

Has any court ever held that as a per se proposition?

MR. JOHNSON:

Not as a per se proposition. Our position is based on the evidence presented to this Court last May and on the basis of that record and on the basis of the information the Department of Justice has filed with this Court evaluating the effect of multi-member districts in certain areas, and stating our specific reasons for objecting to the state's plan.

JUDGE COLEMAN:

Let me ask you this: Do you agree that under *East Carroll* our standard is constitutional and not Section Five standards?

MR. JOHNSON:

Yes, Your Honor. No doubt about that.

JUDGE COLEMAN:

All right. What are the constitutional standards that will be applicable to this? For one thing, Section Five switched the burden of proof from the plaintiff to the state of the subdivisions. The burden of proof under the

constitution, as I understand it, remains the same. Isn't that so?

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[44] [By Mr. Johnson] criteria was to attempt to group districts in our plan that coincided geographically with the boundaries in the court's plan and to exclude those from the need of special elections, because the premise is that you could not determine who the representative should be for those districts didn't apply. Our efforts to do that indicated that in extremely rare instances that that occurred, and we have set forth a description, and the affidavit does attach maps for our plan showing the counties in which special elections would not be necessary.

I'll use the remainder of my time——

JUDGE COX:

Time's up, isn't it?

JUDGE COLEMAN:

I want to hear him on one other point.

MR. JOHNSON:

We have filed previously our position on the meaning of the *Chapman case*. Our position is still that, and we believe that the Supreme Court's decision in *East Carroll Parish* substantiates that position, that single-member districts are required from this Court.

JUDGE COLEMAN:

What different language did they use in *East Carroll* to what they used in *Chapman*?

MR. JOHNSON:

[45] They didn't use any different language, Your Honor. I think the primary thrust is with *Mahan*. If the Court reads that opinion carefully I think they will see that only

where the Supreme Court discussed the changes made by the District Court did they discuss the issue of the preferability of single-member districts. The rational state policy discussion concerned affirming the plan that the Virginia legislature had adopted, not the plan the court had adopted.

JUDGE COLEMAN:

What I wanted to ask you about, Counsel, is the Court directed, or requested, one or the other, the Department of Justice to file a detailed report with this Court on this *White* v. *Regester* facet of the case indicating the observations made by the federal referees and examiners and observers in the first primary election in 1975, and second primary election in 1975 and the general election in 1975, and the Department of Justice, of course, complied with that request and filed that data showing just what incidents of any kind occurred under the observation of those observers that would indicate any impediment in the right of the Black people of Mississippi to cast their votes and to have them counted just like any other person. I wonder if you'd like to comment on what you think that data and those observations prove?

[46] As I recall it you had no complaints but about two or three cases. You had Madison and Yazoo where a single little incident occurred. May be others—I've not thoroughly read all of the report pending the oral argument here today. What would you like to tell us about the significance of that report where you had a widely attended first and second primary and general election and six or eight hundred on the scene watching what was going on and you could only come up with about two or three instances of any problems?

MR. JOHNSON:

I think first, of course, that report is quite lengthy and it has been some time since I've read the entire report and

would not be able to mention any specific details, but I think that the most important thing to emphasize to the Court on that is that that report alone does not address the issue of whether multi-member districts——

JUDGE COLEMAN:

I'm not talking about that at all. I'm talking about one facet of the constitutional standard, the lingering effect of past discrimination. *White* v. *Regester* is certainly one of the things that has to be considered.

MR. JOHNSON:

That report and what happened at the polls on election day certainly does not exhaust the possibilities [47] of how there may be continuing effects of past racial discrimination, so my statement on what that report means is that it's one piece of information for the Court to consider along with the other pieces of information in the record for the Court to consider.

JUDGE COLEMAN:

Would it be your opinion that the voting rights act, after it's been on the books for eleven years, has not yet accomplished its purpose in Mississippi?

MR. JOHNSON:

Well——

JUDGE COLEMAN:

You are speaking for the Department of Justice, and you came down to speak for them.

MR. JOHNSON:

I would say simply that there is a lot of work to be done pursuant to the voting rights act in Mississippi and other places.

JUDGE COLEMAN:

What would be the nature of that work?

MR. JOHNSON:

Well, of course the voting rights act observer and examiner program has been in effect for the eleven years, and in the view of Congress last year it was necessary to extend that.

[48] JUDGE COLEMAN:

It has been extended and still is the law.

MR. JOHNSON:

That's correct. My opinion is——

JUDGE COLEMAN:

My question is whether or not it's really served its purpose in Mississippi according to the evidence that you have submitted to the Court.

MR. JOHNSON:

I don't think that the voting rights act—certainly has not exhausted all possibilities of continued racial discrimination. I think what I was trying to say with regard to Congress is that Congress saw fit in its judgment that the voting rights act had not finally concluded all the effects of past discrimination and an extended period was necessary. That's the position of the Department of Justice.

JUDGE COLEMAN:

My position about it, frankly, is if I send 300 men out hunting and they came back with three birds I would think that maybe 297 of them had no business being along. That's what you did. I believe it was maybe 600 people. Let's say you sent out 600 men on a hunt and came back with 12 birds, which is about what you've turned up in all this observing.

You certainly had a right to observe, and frankly [49] I'm very glad you did. That's the only way to find out what's going on, is for the United States to send the people in there to see and tell us, but looks like the catch was mighty skimpy for the house to start hanging some kind of constitutional argument on it.

MR. JOHNSON:

The United States' position is not solely on the basis of that report you should hang your constitutional position. We feel that it's one piece of evidence with a lot of evidence for the Court to evaluate, and of course I would like to point out that it is known when we go into counties with federal observers they know we are going to be there, and of course the mere federal presence may well have an effect on the people not doing things that might otherwise exist. Certainly if a gentleman sees a police officer standing on the corner he's not going to go in and rob the bank in front of him. There is that effect.

JUDGE COLEMAN:

You are asking us to assume a good deal there.

MR. JOHNSON:

I'm really not asking the Court to assume anything other than point out that the limitations of that report that the United States foresaw even before this Court asked the United States to do.

JUDGE COLEMAN:

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[51] [By Mr. Summer] thing they said in 1970. I attended all of the hearings, and the congressional——

JUDGE COLEMAN:

Don't get into that, Mr. Summer, because Congress has passed the law and it is on the books. I was just asking

him about the evidence which he had tendered. I'd be glad for you to discuss that.

MR. SUMMER:

All right, sir. I'd like to say to the Court first that we are in an unusual position. As the Court knows, we are not in a position to submit plans as the plaintiffs and Department of Justice have. This was decided early on, I think, in the proceedings, and this was validated by the committee of the house and senate that has charge of these matters in the last session to pursue the plan that is presently before this Court, so I come before this Court not representing myself, but representing the plan that the state legislature passed that was amended by this Court.

I would first reiterate most of the things have already been said, but that this thing, the state, since 1817, 148 years ago, has been structured around a government of county governments, and those county governments have what used to be the state's relation with the federal government, and that probably presently doesn't exist now between the states and federal government now, but we have no state-wide [52] police, for instance. We have no state-wide lots of things because the people who wrote that constitution—and we still have it, whether it's good, bad, or indifferent—seem to think that it would be better to keep government on a local level than bring it on a state level, and as a result of that, of course, the constitution provides that the county lines cannot be changed without a vote of the people.

That being a constitutional mandate, I think it has some bearing in regard to the Court's final decision in regard to this thing.

Then, of course, you have the constitutional provisions in regard to passing of local and private legislation, which if we get into the special single-member districting plans that have been advocated by the plaintiffs and Department of Justice, you get into a fragmented state of affairs where the smaller counties will wind up with absolutely no representation and the larger counties will wind up with an indifferent representation, and you will have a bunch of representatives representing a group of people with no common interest, and therefore would not be bound to the principles and the historical factors that this state has grown and developed on, and that is the county lines, because within those county lines you have such things as issuance of bonds and securities, county hospitals, jails, disaster relief, county school districts, county homes and [53] farms, taxes, grand juries, criminal justice systems, county courts, county prosecuting attorney——

JUDGE COLEMAN:

That's why I think it's so disastrous and unfair for each and every county to have been denied at least one representative, but apparently we have already crossed that bridge.

MR. SUMMER:

Yes, sir. However, since we have crossed that bridge, this brings up a point that since *Baker* v. *Carr*, which was sought so avidly by those who wanted to change the entire system and get into a one man-one vote proposition which goes now to the election of the legislature, has reacted in that if it had not been for *Baker* v. *Carr* then I'm sure we wouldn't be at this table, because there would have been minority counties, voting counties, so the legislature would probably have 25 percent minority now without any trouble whatsoever, provided minority would vote for minority, which has never been shown in this Court even though it has been alleged.

There has been many instances where an entirely Black county in the State of Mississippi where in some instances they were not even Black candidates, and other instances

where the Black candidates were defeated by the White candidates, so the fact that the charges that is in the

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[58] [By Mr. Summer] One short thing that I would like to say before I shut up and that is that we had had prepared—talking about the responsiveness of a legislator to a minority group—we have had—we did not have time to put it in the form of an affidavit, but I think the Court should ta:e judicial notice of the matter of appropriations; that some $337,000,000 have been appropriated by the State of Mississippi for the minimum education programs, drug programs, vocational and technical education, manpower, adult education, learning research, school lunch programs —there is no way that any and all of these programs that some millions upon multiplied millions could have been spent or appropriated by the state legislature unless they had been responsive to the needs of the minorities.

Thank you, sir.

JUDGE COLEMAN:

Anything further, Mr. Parker?

MR. PARKER:

I didn't take all my time. I would like two minutes for a short rebuttal.

JUDGE COLEMAN:

I have a comment I want to make, but I want to hear from you all first.

MR. PARKER:

I disagree with the statement that the Court is

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Response of Defendants to Plaintiffs' Motion for an Immediate Decision

[TITLE OMITTED IN PRINTING]

[FILED AUGUST 9, 1976]

Defendants, by their attorneys, hereby respond to plaintiffs' motion for an immediate decision in this cause. As hereinafter set forth, defendants would state and show to the Court that while defendants have no objection to the actual relief requested by plaintiffs' motion, defendants do object to both the fact of the request and the erroneous grounds assigned therefor. In responding, defendants would state as follows:

1. In denying plaintiffs' similar motion at the last hearing, the Court properly characterized the complexity of the task and reaffirmed its determination that reapportionment was not to be unnecessarily delayed.

2. The parties to this action and the general public have been made aware via the news media that the Court's legislative reapportionment plan is proceeding with reasoned speed toward completion. Defendants would not add to this Court's laborious duty, nor infringe upon this Court's prerogative of determining at what hour, of what day, in which week it should render its decision in this cause by making a "grandstand" gesture for the purpose of pressuring this Court to act, without regard to necessary and proper judicial deliberation.

3. In requesting an immediate decision, plaintiffs further improperly imply that the Court should favor the interest of non-incumbent candidates who plaintiffs erroneously allege "have been excluded from the Mississippi Legislature by racially discriminatory multi-member districts and at-large voting. . . ." (Plaintiffs' Motion, p. 2) Likewise, plaintiffs erroneously assume that the Court has

made a finding that the present districts are in fact discriminatory. (Plaintiffs' Motion, p. 3)

4. Defendants submit that the Court's final decision embodying its legislative reapportionment plan should enure to the benefit of the entire electorate of the State of Mississippi and, contrary to the assertions of plaintiffs, that the Court's decision should not favor the interest of any particular group, however characterized. If the Court's task of fashioning a reapportionment plan comporting with law, equity, and the Constitution can be accomplished with reasoned speed, then defendants respectfully submit that such should be done. However, the interest of the entire electorate of the State of Mississippi should not be sacrificed for the interest of *time*.

Respectfully submitted,

A. F. SUMMER
ATTORNEY GENERAL
STATE OF MISSISSIPPI

GILES W. BRYANT
SPECIAL ASSISTANT ATTORNEY GENERAL

WILLIAM A. ALLAIN
SPECIAL COUNSEL

/s/ By: A. F. Summer
A. F. SUMMER

[CERTIFICATE OF SERVICE OMITTED IN PRINTING]

Defendants' Submission Pursuant to Order

[TITLE OMITTED IN PRINTING]

[FILED SEPTEMBER 8, 1976]

It is the firm position of defendants, and they hereby submit, that neither the *Constitution of the United States* nor the authoritative law or equity call for any special elections for the Mississippi Senate. No valid reason exists for invalidating the election in any Senate district conducted in 1975 pursuant to the orders of this Court.

During the June 15, 1976, hearing in this cause, the Court expressed its opinion as to what must be shown to justify the holding of special elections in this case:

> "We are further of the opinion that no special election should be required in any new legislative district unless the district used in the temporary plan in that particular geographical area was either impermissibly malapportioned or caused an impermissible dilution of Black voting strength." [Transcript, June 15, 1976; p. 8.]

While a finding of impermissible malapportionment or dilution does not *per se* mandate special elections, before special elections can be ordered *there must be a finding by the Court* that a particular temporary district was in fact malapportioned or did in fact impermissibly dilute black voting strength. Absent such a finding a Federal Court is without jurisdiction to order special elections.

The crux of the matter is plainly that racial dilution has never been shown by plaintiffs and in fact does not exist. On this vital point defendants point out three truisms:

1. Plaintiffs have failed to show and cannot show a denial of access to the political processes and, therefore,

have totally failed to show that any temporary Court-ordered district unconstitutionally diluted black voting strength. (See defendants' "Memorandum Brief on the Constitutional Standard for Measuring Racial Dilution", filed June 25, 1976.)

2. This Court has properly never made a finding that any particular temporary district or districts caused an impermissible dilution of black voting strength. The opposite is true. This Court has previously found, when presented with substantially the same districts adopted and proposed by the Mississippi Legislature, that *these districts did not unconstitutionally minimize black voting strength* and further were not malapportioned. [Opinion, May 19, 1975.] It should be remembered that plaintiffs stood on the record upon remand by the Supreme Court (June 5, 1975); thus, the facts are still the same.

3. In fashioning the new Senate plan, this Court applied the "Conner-Johnson Rule" expressing a preference for single-member districts in the Court-ordered plan. While defendants have strongly maintained that this rule spoke against *large* multi-member districts and not *small* multi-member districts, for the purposes of this argument defendants will not belabor the Court with how it should be applied but rather will focus on the *effect* when it is applied. As hereinafter set forth, *the "Conner v. Johnson Rule" ironically precludes the ordering of special elections in this case.*

This rule derives from the Supreme Court's supervisory power and not from any constitutional considerations; thus, if there did exist a necessity for a new Senate plan it was not for the purpose of replacing an unconstitutional Court-ordered plan, but rather a Court-ordered plan that allegedly failed to follow this rule imposed under the Supreme Court's supervisory powers.

Plaintiffs have in fact taken this position. They stated in their last brief at pages 1 and 2:

> ". . . this Court need not reach that issue [unconstitutional dilution of black voting strength] in striking down all multi-member districts in the 1975 temporary court-ordered plan and in ordering a permanent court-ordered plan which, as required, provides single-member districts statewide." [Plaintiffs' Memorandum of Law, filed June 25, 1975.]

This Court has never found unconstitutional racial dilution to exist. Such dilution does not exist. Plaintiffs repeatedly attempt to steer the Court into a determination that the Court itself diluted, by its former plan, voting strength of the black citizens of this state. This is not the case. The Court has frequently stressed that its efforts were to devise the fairest reapportionment plan it could without regard to race. The plaintiffs are simply wrong when they argue that the joining of an area having a black population majority with one having a white population majority where the resulting district has a white population majority constitutes unconstitutional racial dilution. Absent a showing of invidious discriminatory purpose and absent a showing of denial of access to the political processes the above situation does not result in dilution of black voting strength.

The Court held by its order of July 8, 1975, that

> ". . . no irreparable injury will occur by allowing the 1975 legislative elections to proceed under a temporary plan on the dates provided by law."

Defendants submit that the Court was eminently correct in that determination. The Court further held that

> "If the permanent plan, later to be adopted, manifests that the temporary plan has caused such an injury the same shall be corrected by special elections as provided by Mississippi law."

Again defendants would state that without a finding of racial dilution there can be no injury. Assuming *arguendo* that all that plaintiffs have said up to this point was correct, their request for special elections in the districts they have selected (as reported in the news media) is not only without constitutional, legal or equitable support but defies all reason. In the districts where plaintiffs request special elections there is minimal change in the territory in many districts and insignificant change in the black-to-white population ratio in all of these districts. For example, the Tate, Tunica, Quitman district has been altered only by the deletion of one supervisor's district from Quitman County and the Coahoma district was altered only by the addition of the above-referenced supervisor's district. Further the black-white ratio on the Tate, Tunica and Quitman district changed only by one-tenth (1-10th) of one percent (1%) [*i.e.*, from a 57.1% Black Population Majority ("BPM") to a 57.2% BPM]; and, the Coahoma district's BPM decreased by only one percent (1%) [*i.e.*, from a 65% BPM to a 64% BPM]. In each and every other district where plaintiffs want to hold another election, the changes were likewise very insignificant. These districts were already black population majority districts. The change were very insignificant. Plaintiffs' request for special elections in these districts is absurd.

Defendants submit that no special elections should be ordered. As held by the Court, the new reapportionment plan should "be in force and effect *for the regular quadrennial election of 1979 . . .*" Even if there were constitutional justification for special elections in certain districts, to prevent the domino effect of massive statewide special elections and the attendant irreparable injury to the electorate of the state, the Court should stay its hand so that its under-

lying purpose of restoring the stability of the Mississippi legislature can be achieved!

Repectfully submitted,

A. F. Summer
Attorney General
State of Mississippi

Giles W. Bryant
Special Assistant Attoney General

William A. Allain
Special Counsel

/s/ By: A. F. Summer
A. F. Summer

Office of the Attorney General
State of Mississippi
Post Office Box 220
Jackson, Mississippi 39205

[Certificate of Service Omitted in Printing]

Defendants' Submission Pursuant to Order and Objections to Request for Special Elections

[TITLE OMITTED IN PRINTING]

[FILED SEPTEMBER 23, 1976]

The state defendants, by their attorneys, object to the requests for special elections in any new House or Senate districts. Pursuant to the Court's Order of September 8, 1976, defendants submit the following in opposition to the calling of any special legislative elections prior to the regular quadrennial elections of 1979.

I. WHAT THE PLAINTIFFS AND PLAINTIFF-INTERVENOR REALLY SEEK IS A POLITICAL "SOLUTION" TO THEIR PERCEIVED POLITICAL "PROBLEMS" AND TO USE THIS COURT AS THE VEHICLE TO ACHIEVE ITS POLITICAL RESULTS.

What the plaintiffs and plaintiff-intervenor really seek is a political "solution" to a political "problem," and they seek to use this Court as a vehicle to accomplish such a result. Their request for special elections is an attempt to increase the black membership in the state legislature by isolating in on certain districts where they *believe* they have an opportunity to elect a black legislator where a white legislator or legislators now represent the district. Their theory is based on the percentage of black voting-age population in the new district created by this Court for the 1979 legislative elections.

The defendants urge upon this Court that the plaintiffs and plaintiff-intervenor are not entitled to use the offices of the United States District Court to seek a purely political solution to what is purely a political problem.

Assuming arguendo that the plaintiffs were correct in their contention that they have a right to redress, their

hypothesis with respect to the expectation of results is pure speculation.

Plaintiffs and plaintiff-intervenor would have the Court believe that, based on the request for special elections they have made to the Court and the statistical data submitted to support such request, there would be some massive increase in the number of blacks elected in such special elections. The defendants believe that to be sheer fantasy. Blacks have participated as candidates in legislative districts where there is a substantial black voting population, and yet the results of such elections clearly indicate beyond any reasonable argument that blacks will not necessarily support any and every black candidate. The result, therefore, is that there would be a substantial disruption of the current Mississippi Legislature with little or no likelihood that the results, from a racial point of view, would be significantly different.

Most of the requests for special elections for the Senate and many such requests for the House are apparently aimed at districts which are now smaller geographically than they were in 1975. This choice is apparently based on a theory that it is easier for a black to campaign in a small district as opposed to a large one geographically. Defendants can only urge upon this Court that such consideration is so far beyond the purview of the Fourteenth and Fifteenth Amendments as to have this Court engage in the rankest kind of political decisionmaking.

At the risk of redundant alliteration, what the plaintiffs and plaintiff-intervenor request is that this Court engage in selective gerrymandering of the current legislature by picking and choosing certain legislative districts in which to seek special elections in the hope—and we emphasize *hope*—that by some strange twist of fate, the black voters in the selected target districts will somhow unite behind a single black candidate. We submit that that may be great

political euphoria, but there is not a scintilla of evidence in this record that would indicate that such a result is reasonably to be expected. In the meantime, the state's political machinery and processes in one of its indispensable branches of state government are to be substantially disrupted. The defendants would urge upon this Court that it view the legislature not simply as a two-house organization of 174 individual members, but rather as an institution of state government and one that this Court and all federal courts should give some deference to with respect to its ability to conduct and transact its business.

In short, the plaintiffs and plaintiff-intervenor have attempted to make out a case for political intervention by the federal government through the federal courts in to the political processes of a sovereign state, but they have fallen woefully short of making out a case for intervention based on the Fourteenth and Fifteenth Amendments to the Constitution of the United States.

II. The Plaintiffs and Plaintiff-Intervenor Have Failed To Make an Argument for a Dilution of Black Voting Strength within the State, and Specifically within those Districts for which They Have Requested Special Elections Pursuant to the Permanent Plan of Reapportionment, which Would Require this Court on any Constitutional Theory To Order Special Elections Prior to the General Elections To Be Held in 1979.

The facts in this case are clearly distinguishable from those in the case of *White* v. *Regester*, 412 U.S. 755, 37 L.Ed. 2d 312, 93 S.Ct. 2332 (June 18, 1973). There, the Supreme Court did not make sweeping statements regarding the nature of the right to vote and what specific measures must be taken to preserve it intact, but rather concluded that:

> "On the record before us, we are not inclined to overturn these findings, representing as they do a blend of history and an *intensely local appraisal* of the design and impact of the Bexar County multimember district in the light of past and present reality political and otherwise."

White v. *Regester* showed a long history and pattern of exclusion of Mexican-Americans and blacks from the most elementary of political participation in Bexar and Dallas Counties, Texas. The Court in *White* was confronted with a challenge to the multimember district of Dallas County, Texas. An important factor relied upon by the district court was the fact that the *Dallas Committee for Responsible Government* (DCRG), a white-dominated organization, was in effective control of Democratic Party *candidate slating* in Dallas County; and as the district court found, the DCRG did not need the support of the Negro community to win elections in that county.

Thus, as the Supreme Court determined:

> "... the District Court concluded that 'the black community has been effectively excluded from participation in the Democratic primary selection process,' id., at 726, and was therefore generally not permitted to enter into the political process in a reliable and meaningful manner."

No such candidate-slating process exists in Mississippi. Further, the record clearly shows that black citizens have no difficulty in securing a position on the ballot for any office in the State of Mississippi. *White* and *Whitcomb* v. *Chavis*, 403 U.S. 124, 29 L.Ed.2d 363, 91 S.Ct. 1858 (1971) teach that one of the critical factors in determining "acceses to the political process", and thus whether multimember districts in a given area have a diluting effect on the voting strength of the black community in that area, is whether or not those particular black citizens are effectively excluded from the *initial* selection process and thus not permitted to *enter* into the political process.

Plaintiffs' "evidence" offered to show the denial of access to the political processes is not only rendered insubstantial by its own weight, but is of minute value to this Court. It is cast in the most general and theoretical terms. Likewise, it is directed toward multimember districts generally. Furthermore, plaintiffs' own evidence demonstrates that black citizens in Mississippi enjoy full access to the political processes. Plaintiffs' own witnesses testified that black citizens have no difficulty in registering to vote, in voting for those candidates they prefer, or in running for elective office. Reverend Barber testified that the ". . . technical bars to political participation are 99 percent down." [May 5, 1975 Transcript, 253] Plaintiff Kirksey testified that he has encountered no difficulty in the exercise of his right to vote and that he was able to garner 10,000 votes for a state Senate seat on the expenditure of only $85.00.

As was brought out during the most recent hearing before this Court, there were only a *few* minor voter irregularities during the 1975 primary and general elections. Federal observers positioned at hundreds of polling places throughout the state, including the black majority areas, found nothing other than the normal types of problems that are to be expected in any election regardless of where it might be held or whose name might be on the ballot or what the color of voters' skin might be. Unlike the plaintiffs in *White* v. *Regester*, supra, plaintiffs have not even attempted to offer, nor could they offer, specific evidence as to any particular multi-member district and the particular "diluting" effect such district has on a particular black community. Without question, they have not shown a denial of access to the political processes in the former districts where they now seek special elections.

Where the minority group is afforded the opportunity to participate in all stages of the political process and where the redistricting scheme is rooted in a strong state policy

divorced from the maintenance of racial discrimination, there can be no finding of dilution.

In this Court's opinion of July 11, 1975, it set forth its conclusion that in the electoral process black citizens are not now suffering from the impact of past discrimination. The Court stated:

> "Our former opinion in this case, dated May 19, 1975, —— F.Supp. ——, found as a fact (reversed on other grounds) that in the electoral processes black citizens are not now suffering from the impact of past discrimination; that they are not hindered, hampered, or in any way impeded in registering to vote, or in voting, for candidates of their individual choice.
>
> "We there concluded:
>
> 'As a matter of fact, it is obvious that the Voting Rights Act of 1955 has effectually reduced all such racially discriminatory factors to what honestly may be determined an irreducible minimum.'
>
> "In the present opinion, we include by reference all of the facts and considerations set forth in the May 19 opinion negating the presence of racial discrimination in the electoral processes of this State.
>
> "At the hearing held in this Court subsequent to the most recent Supreme Court remand we expressly offered the parties an opportunity to submit further evidence on this subject. Including the Department of Justice, they all stated that they preferred to stand on the record as it existed at the time of our prior opinion. No further evidence was offered."
>
> [See *Washington* v. *Davis*, No. 74-1492, 44 U.S.L.W., 4789 (June 7, 1976), for the latest announcement that ". . . proof of discriminatory racial purpose is [necessary] in making out an equal protection violation."]

Therefore, plaintiffs have failed to make out a case based on this record of a right to constitutional redress for any claim of denial of access to the political process in Mississippi, as it has any bearing on the elections of 1975. Failing that, they are not entitled to a remedy in the form of special elections in 1977 based on the claim of dilution of the black vote.

III. THE PLAINTIFFS AND PLAINTIFF-INTERVENOR HAVE FAILED TO MAKE OUT A CONSTITUTIONAL ARGUMENT REQUIRING THIS COURT TO CALL SPECIAL ELECTIONS BASED ON ITS PERMANENT REAPPORTIONMENT PLAN, IN THAT THE MULTI-MEMBER DISTRICTS IN BOTH HOUSE AND SENATE ARE NOT CONSTITUTIONALLY IMPERMISSIBLE.

Connor v. *Johnson* permits the use of multi-member districts. Single-member districts are only "preferable" as a "general matter." This Court has addressed the problem of multi-member districts since the Supreme Court's holding in that case and has also obviously been cognizant of the Court's holdings on that question in *Chapman* v. *Meier*, 420 U.S. 1 (1975). Multi-member districts have been official state policy in the State of Mississippi for the last 159 years. It is obvious, therefore, that such multi-member districts were not founded on any basis of racial exclusion. Nevertheless, this Court, in preparing the 1975 plan, was cognizant of the Supreme Court's general principle as laid down in *Connor* v. *Johnson*.

In the 1975 plan, the Court apportioned the state's largest county into 12 single-member House districts and 5 single-member Senate districts with which the plaintiffs and plaintiff-intervenor do not find fault except as the district lines themselves have been drawn.

The other multi-member districts in the temporary plan were small both as to their total number and as to the

number of legislative positions to be filled within each. They certainly do not fall within the Supreme Court's concern of large multi-member districts. Therefore, there is no need for special elections since the small multi-member districts existing in the 1975 plan were not in any respect in violation of the Constitution.

IV. THE NATURAL AND PROBABLE RESULT OF THE COURT'S GRANTING OF THE PLAINTIFFS AND PLAIPTIFF-INTERVENOR'S REQUEST FOR SPECIAL ELECTIONS IN EITHER HOUSE OR SENATE WILL REQUIRE ELECTIONS IN ALL OR NEARLY ALL LEGISLATIVE DISTRICTS OF THE STATE BECAUSE OF THE "DOMINO" EFFECT OF THE HOLDING OF SUCH SEGMENTED OR PARTIAL LEGISLATIVE SPECIAL ELECTIONS.

Again, the plaintiffs and plaintiff-intervenor, while seeking a political solution to their political problem, have failed to recognize and thus have failed to advise this Court as to what the practical results of special elections, as they have requested, would be with respect to the rest of the legislative districts and the people who inhabit them. Some would be under-represented, some over-represented and some unrepresented. Some would be balkanized and others would be fragmented.

It is time for this controversy to cease. As this Court so aptly stated:

> "There comes a time when stability, the prime requisite of effective government, should be attained. We have decided to divide the State into single-member legislative districts in the hope that this long-running controversy may at last be terminated and the stability of the Mississippi Legislature restored."

Plaintiffs and plaintiff-intervenor's request for special elections is but a continuation of their constant efforts to bring about instability in the Legislature of the State of Mississippi. To effectuate a final and just resolution to

this cause, the request for special elections should be and must be denied.

Respectfully submitted,

A. F. SUMMER
ATTORNEY GENERAL
STATE OF MISSISSIPPI

P. ROGER GOOGE, JR.
GILES W. BRYANT
SPECIAL ASSISTANT ATTORNEYS GENERAL

WILLIAM A. ALLAIN
SPECIAL COUNSEL

/s/ By: A. F. Summer
A. F. SUMMER

Office of the Attorney General
State of Mississippi
Post Office Box 220
Jackson, Mississippi 39205

[CERTIFICATE OF SERVICE OMITTED IN PRINTING]

Supreme Court, U. S.
FILED
FEB 9 1977
MICHAEL RODAK, JR., CLERK

APPENDIX

VOLUME I

In the Supreme Court of the United States

OCTOBER TERM, 1976

Nos. 76-777, 76-933, 76-934, 76-935

PEGGY J. CONNOR, ET AL., *Appellants*

v.

CLIFF FINCH, GOVERNOR OF THE STATE OF MISSISSIPPI, ET AL.

CLIFF FINCH, GOVERNOR OF THE STATE OF MISSISSIPPI, ET AL., *Appellants*

v.

PEGGY J. CONNOR, ET AL. AND UNITED STATES OF AMERICA

UNITED STATES OF AMERICA, *Appellant*

v.

CLIFF FINCH, GOVERNOR OF THE STATE OF MISSISSIPPI, ET AL.

PEGGY J. CONNOR, ET AL., *Appellants*

v.

CLIFF FINCH, GOVERNOR OF THE STATE OF MISSISSIPPI, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

DOCKETED DECEMBER 8, 1976, AND JANUARY 5, 1977
PROBABLE JURISDICTION NOTED DECEMBER 8, 1976
AND JANUARY 17, 1977.

TABLE OF CONTENTS

	Page
Docket Entries	I-1
Complaint (October 19, 1965)	I-37
Plaintiffs' Exhibit 19 (May 17, 1971) (excerpt)	I-47
Transcript of Proceedings (February 7, 1975) (excerpts)	I-51
Judgment (April 11, 1975)	I-52
Amended Complaint for Injunctive and Other Equitable Relief (April 15, 1975) (exhibits omitted)	I-54
Transcript of Proceedings (May 7, 1975) (excerpts)	I-70
Plaintiffs' Exhibits (May 7, 1975)	I-71
P-6 Deposition of Harold E. Sweeney, Jr. (exhibits omitted)	I-71
P-7 Deposition of Dr. James W. Loewen (exhibits omitted)	I-117
P-8 Deposition of Dr. Gordon G. Henderson (exhibits omitted)	I-155
P-9 Interrogatories of Honorable J. Stanley Pottinger (exhibits omitted)	I-200
P-10 Deposition of Rims Barber (exhibits omitted)	I-221
P-17 Transcript of February 7, 1975 Testimony of Dr. David Valinsky (exhibits omitted)	I-281
P-19 Valinsky Plan for Mississippi House of Representatives	I-325
P-20 Valinsky Plan for Mississippi State Senate	I-346
P-25 Deposition of Henry J. Kirksey (exhibits omitted)	I-360
P-32 Kirksey Plan for Mississippi Senate (map omitted)	I-410
P-33 Kirksey Plan for Mississippi House of Representatives (map omitted)	I-419
Transcript of Proceedings (May 7, 1975)	II-1
Witnesses:	
Dr. Gordon G. Henderson (exhibits omitted)	II-1
Mr. Rims Barber (exhibits omitted)	II-81
Henry J. Kirksey (exhibits omitted)	II-114
Order Allowing United States to Intervene as Party-Plaintiff (June 11, 1975)	II-128
Complaint in Intervention of United States (June 11, 1975)	II-129

Page

Analysis of House Bill 1290 and Senate Bill 2976 by United States (June 20, 1975) II-135
Transcript of Proceedings (June 20, 1975) (excerpt) II-177
Order Pursuant to Remand by the Supreme Court of the United States (June 25, 1975) II-178
Order Establishing Certain Temporary Districts for the Election of Senators and Representatives in the Mississippi Legislature for the Year 1975 Only (July 8, 1975) II-183
Order Establishing Certain Temporary Districts for the Election of Senators and Representatives in the Mississippi Legislature for the Year 1975 Only (July 11, 1975) II-207
Plaintiffs' Motion to Alter or Amend Judgment (July 21, 1975) (exhibits omitted) II-239
Motion of United States for Amendment of Judgment (July 24, 1975) II-252
Order on Motions Filed by Plaintiffs and Plaintiff-Intervenor to Alter or Amend (August 1, 1975) .. II-254
Order Regarding Use of U. S. Census Bureau Population Statistics (August 1, 1975) II-256
Alternative Plans Submitted by the United States Pursuant to Order of July 11, 1975 (October 31, 1975) (map exhibits omitted) III-1
Request for Hearing Date by United States (January 26, 1976) III-78
Order Deferring Further Hearing and Decision (January 29, 1976) III-79
Preliminary Observations of Judge Coleman (June 15, 1976) III-81
Transcript of Proceedings (June 15, 1976) (excerpt) III-89
Plaintiffs' Motion for a Prompt and Immediate Decision on a Final Court-Ordered Legislative Reapportionment Plan and Special Elections (August 2, 1976) III-91
Order Regarding Reapportionment of Mississippi State Senate (August 24, 1976) III-94
Order Regarding Reapportionment of Mississippi State House of Representatives (September 8, 1976) III-117
Plaintiffs' Motion for Special Election Relief (September 8, 1976) III-139

Page

Proposal by United States for Special Elections (September 16, 1976) III-142
Plaintiffs' Motion for Special Elections (House Plan) (September 16, 1976) III-146
Plaintiffs' Motion to Alter and Amend Judgment and Plaintiffs' Objections to 1976 Court-Ordered Legislative Reapportionment Plan (September 20, 1976) (exhibits omitted) III-160
Proposal by United States for Special Elections (September 28, 1976) III-169
Letter dated September 28, 1976 from William D. Neal to Honorable J. P. Coleman, Judge III-174
Memorandum from Special Master re House of Representatives (October 7, 1976) III-177
Plaintiffs' Supplement to Motion to Alter or Amend Judgment (October 8, 1976) III-182
Letter dated October 19, 1976 from Frank R. Parker to Honorable J. P. Coleman, et al. III-197
Objections of the United States to Plans for the Redistricting of the Mississippi Senate and House of Representatives Contained in the Court Orders of August 24 and September 8, 1976 (October 22, 1976) III-206
Order Amending the Reapportionment of the House of Representatives (November 12, 1976) III-220
Final Judgment (November 18, 1976) III-232
Plaintiffs' Notice of Appeal (November 18, 1976) .. III-249
Plaintiffs' Motion to Alter or Amend Judgment (November 29, 1976) III-250
Order by the U. S. Supreme Court Noting Probable Jurisdiction (December 8, 1976) III-259
Letter dated December 17, 1976, from Honorable James P. Coleman to the Clerk, U. S. District Court, attaching Special Master's Report dated December 8, 1 III-260
Order Amending Previous Judgment (December 21, 1976) III-279
Plaintiffs' Notice of Appeal (December 27, 1976) .. III-283
United States' Notice of Appeal (December 28, 1976) III-284
Orders Noting Probable Jurisdiction III-285

Docket Entries

United States District Court for the Southern District of Mississippi

10-19-65 Complaint, original and eight copies, filed.

10-19-65 Summons, original and five copies, copies having attached thereto copy of complaint, issued and handed U. S. Marshal.

10-19-65 Copy of complaint mailed to Judge Harold Cox.

10-27-65 Designation of Hon. James P. Coleman, United States Circuit Judge, Hon. Dan Monroe Russell, Jr., United States District Judge for the Southern District of Mississippi and Hon. William Harold Cox, United States District Judge for the Southern District of Mississippi signed by Judge Elbert P. Tuttle, Chief Judge of the United States Court of Appeals for the Fifth Circuit, to hear and determine the action, filed and entered OB, 1965, Page 1040.

11-6-65 Motion of Defendants for additional time within Motion for More Definite Statement, with certifi-

11-6-65 ORDER: for good cause shown on Motion, defendants are granted 45 additional days within which to make defense to this cause in any manner permitted by the Federal Rules of Civil Procedure, filed and entered OB, 1965, Page 1052.

12-3-65 Motion of Plaintiff for a hearing on their application for preliminary injunction as soon as possible and in any event prior to January 4, 1966, the date the Mississippi legislature will convene in regular session, with certificate of service, filed.

12-17-65 Defendants' Motion to Drop Party, with certificate of service filed.

12-17-65 Defendants' Motion to Strike and Alternative Motion for More Definite Statement, with certificate of service, filed.

12-17-65 Defendants' Motion to Dismiss and Alternative Plea in Abatement, with certificate of service, filed.

12-29-65 Notice of call for setting three-judge cases on

January 7, 1966 at 2:00 P.M., at Jackson, Miss., mailed to attorneys of record.

4-18-66 Motion of L. H. Rosenthal, attorney of record, to withdraw as counsel for plaintiffs, with certificate of service and notice, filed.

5-17-66 Order granting L. H. Rosenthal leave to withdraw as counsel on the motion filed 4-18-66, filed and entered O.B. 1966, Page 349. (Copies mailed to attorneys, also copies mailed to 3 Judges).

6-22-66 Notice of trial at Jackson, Miss. at 9:00 A. M. on July 15, 1966, together with calendar, mailed by registered mail, return receipt requested.

7-1-66 Defendants' Motion for Summary Judgment with Exhibits "A" and "B", certificate of service and notice of hearing on July 15, 1966, at 9:00 A.M., Jackson, Miss., or as soon thereafter as possible, filed.

7-7-66 Notice of Appearance of R. Jess Brown as attorney of record for plaintiff, with certificate of service, filed.

7-12-66 Defendants' ANSWER, with Certificate of Service, filed.

7-13-66 Plaintiffs' Amendment to Complaint, with Certificate of Service, filed.

7-12-66 Defendants' Motion to continue this case heretofore set for trial on July 15, 1966, and reset for trial at a later date with notice of hearing on July 15, 1966, at 9:00 A.M., in the U.S. District Courtroom at Jackson, Miss., with attachments and Certificate of Service, filed.

7-12-66 Defendants' motion for the Court to determine by Order, as provided by Rule 23, Fed. Rules Civ. Proc., as amended February 28, 1966, effective July 1, 1966, whether the entire action is to be maintained as a class action and if so, whether notice should be given to members of the class, with notice of hearing on July 15, 1966, at 9:00 A.M., in the U.S. District Courtroom, Jackson, Miss., with Certificate of Service, filed.

7-15-66 Defendants' Answer to New Allegations with certificate of service, filed. (Copies handed three judges in courtroom).

7-15-66 Sworn affidavit of Thompson McClellan, filed. (Copies handed three judges in courtroom).

7-15-66 EXHIBITS: Received and filed Plaintiff's 1 thru 13. (Copies made for three judges) (THE EXHIBITS ARE ON A SHELF IN THE EXHIBIT ROOM).

7-22-66 FINDINGS OF FACT AND CONCLUSIONS OF LAW: "In the event the Legislature does not enact an acceptable plan on or before December 1, 1966, this Court will proceed with its own plan by which the new legislators and senators are to be elected. That which has herein appeared shall constitute the findings of fact and conclusions of law in this case, and an order accordingly will be prepared and entered by the Court. Any motion, plea, or pleading not herein disposed of may be considered as left pending the final Judgment in the cause, and, as already stated, we do not here deal with the matter of Congressional Redistricting.", filed.

7-22-66 ORDER Directing Reapportionment of the Senate and the House of Representatives of the Legislature of the State of Mississippi, filed and entered OB 1966, Pages 473, 474 and 475.

7-25-66 Motion for certain documentary material offered into evidence, requested by the Court at the conclusion of the hearing on the merits on July 15, 1966; be admitted into evidence as exhibits subject to such objections as may appear of record in said depositions, and subject to the ruling of the Court, with certificate of service, filed in triplicate.

8-4-66 Motion by defendants for admission into evidence of certain documents with Notice of Motion and certificate of service, filed.

8-4-66 Defendant's Motion objecting to the admission into evidence of certain documents offered by motion of plaintiffs filed on July 25, 1966, with notice of Motion and Certificate of service—filed.

8-15-66 Deposition of Charles M. Hills (Original and three copies) taken July 22, 1966 at Jackson, Miss.—filed.

8-15-66 Deposition of James S. Saggus (Original and three copies) taken July 22, 1966 at Jackson, Miss.—filed.

8-15-66 Deposition of J. Harold Flannery (Original and

three copies) taken July 22, 1966 at Jackson, Miss. with exhibits—filed.

8-15-66 Court Reporter's transcript of Stipulation (original and three copies) taken July 22, 1966 at Jackson, Miss., with one set of exhibits—filed.

8-15-66 Stipulation of Parties with Exhibits 1 and 2 (original and three copies)—filed.

9-30-66 PER CURIAM OPINION: "That which has herein appeared shall constitute the findings of fact and conclusions of law in this case, and an order accordingly will be prepared and entered by the Court.", with attachment, filed. (Anne Crews advised that copies of Opinion mailed to attorneys by Judge Coleman's secretary).

9-30-66 FIRST FINAL JUDGMENT: Order approving and adjudging House Bill No. 911, Mississippi Laws 1966 to be valid and proper and dismissing claim of the Plaintiffs attacking validity thereof with prejudice at plaintiff's cost; This court reserves and retains full jurisdiction of the claim involving reapportionment of the Legislature of Mississippi pending special session of the Legislature, filed and entered OB 1966, Pages 693 and 694. (Copies mailed attorneys) (Anne Crews advised that she mailed copies to judges on 9-26-66).

10-28-66 Plaintiffs' Notice of Appeal to the United States Supreme Court from Judgmnt entered 9-30-66, with certificate of Service, filed.

10-31-66 Copies of Notice of Appeal mailed three judges.

10-28-66 Cash bond on appeal in the amount of $250.00, filed.

12-2-66 ORDER FOR BRIEFING TOWARD DISPOSITION OF CASE: ordered that plaintiffs file their brief on their contentions as to the validity of such newly enacted state legislation and to deliver copies of such brief to the members of this Court and to the opposition on or before noon on 12-17-66; defendants are ordered to file their brief and to deliver copies of such brief to the members of this Court and to the opposition on or before noon 12-27-66; the plaintiffs may respond to such brief in like manner on or before

noon on 12-31-66; the Clerk of this Court shall notify counsel for both sides today of this order and send them a copy thereof, filed and entered OB, 1966, Page 905.

12-2-66 At the direction of Miss Anne Crews, Mr. Alvin Bronstein and Mr. Martin McLendon and were read the Order filed 12-2-66; Judge Russell was handed a copy and Judge Coleman was mailed a copy. After Mr. Bronstein and Mr. McLendon were called they both requested that they come by and pick up the Order rather than have it mailed—which they did.

12-16-66 Brief of Plaintiffs, filed.

12-16-66 Plaintiffs' Motion to Amend Complaint, filed.

12-17-66 Order allowing amendment to complaint as set out in plaintiff's amendment to complaint, filed and entered OB 1966, Page 941.

12-17-66 Plaintiffs' Amendment to Complaint, with Certificate of Service, filed.

12-17-66 Certificate of Service by plaintiffs' attorney, showing service of a copy of the Brief of Plaintiffs on defendants' attorney, filed.

12-23-66 Plaintiffs' Motion for extension of time to complete the docketing of the appeal with the Supreme Court of the U. S. up to and including January 23, 1967, and certificate of service, filed.

12-27-66 ORDER: that the time for the docketing of the above-captioned case with the Supreme Court of the United States, the filing of the jurisdictional statement and all matters ancillary thereto be and it hereby is extended up to and including January 23, 1967, filed and entered OB 1966, page 952.

1-4-67 Copy of Reply Brief of Plaintiffs, signed by R. Jess Brown and Alvin J. Bronstein—filed, pursuant to order of Court.

1-9-67 Defendants' Answer to New Allegations, with certificate of service, filed.

1-10-67 EXHIBITS: D-1 through D-3, filed.

1-10-67 ORDER: The defendants are afforded an opportunity and are invited within five days after this date to articulate the reasons for the variations and disparities appearing on the face of the legislative enactment in suit. A copy of this order

shall be served by the United States Marshal on the Attorney General of Mississippi as due notice hereof today, filed and entered OB 1967, Pages 17 and 18.

1-13-67 Argument by Plaintiff's Counsel with Court Reporter's certificate, filed.

1-16-67 Response to show cause order, with certificate of service filed.

1-18-67 Copies of Senate Bill 1501 through 1505, addressed to Gov. Paul B. Johnson on 11-10-66 to Extraordinary Session of Mississippi Legislature; Amendments to Senate Bills 1501 through 1505; Senate Concurrent Resolution No. 101-107 with attachments; with certificate of Havis Sartor, Secretary of the Senate, filed.

1-19-67 Copies of House Bill Nos. 3, 4, 5, 31, 33 and 34 with certificate of Roman Kelly, Clerk of the Miss. House of Representatives, filed.

3-2-67 OPINION (Judges Coleman, Russell and Cox) establishing Districts for the election of 52 Senators and 122 Representatives in the Mississippi Legislature; parties to suit may, within 10 days file one complete proposed plan for the reapportionment of both Houses of the Legislature for the entire State, such plan to be accompanied by short memoranda or briefs, at opinion of parties, after which the plan will be thoroughly considered by the Court; the Court will then enter its interlocutory order implementing this opinion and changes, if any; this opinion to constitute the Court's finding of fact and concludes as a matter of law that reapportionment herein devised complies with one man one vote rule; the Court retains jurisdiction that it may act upon any plan of Reapportionment hereafter enacted by Leg. of State of Miss.; the order of the Court shall provide for a copy of this opinion and order implementing same duly certified to be served upon the Governor, Attorney General and Secretary of State by the U. S. Marshal, and all Legislators shall be elected and hold office as herein provided until further order of this Court—filed. (Extra copies in drawer in Xerox room).

3-10-67 Plaintiffs' Proposed reapportionment plan and supporting memorandum with certificate of service, filed.

3-13-67 Court reporter's transcript of proceedings taken 7-15-66 before Judges Coleman, Cox and Russell, filed.

3-27-67 INTERLOCUTORY DECREE: Court finds plan submitted by plaintiff suggesting changes and realignment of Counties in Districts 8, 14, 39 and 40 to be "without merit"; sets forth number of senators and legislators and directs Clerk to mail copies of decree to the Governor, Attorney General and Secretary of State of the state of Mississippi, filed and entered OB 1967, Pages 250-254.

3-29-67 OPINION of Supreme Court of the United States PER CURIAM, The Motion to affirm is granted and the judgment is affirmed. MR. JUSTICE DOUGLAS is of the opinion that probable jurisdiction should be noted and the case set down for argument, filed.

3-25-67 Certified copy of JUDGMENT of the Supreme Court of the United States granting the motion to affirm and affirming the Judgment of the District Court, filed and entered OB 1967, Page 299. Copy mailed three judges.

3-10-67 Final J. S. 6 card (at direction of Judge Cox)

3-23-71 Notice of Motion of Defendants for approval of apportionment plan of Miss. Legislature at a time and place convenient to the Court with attached motion certificate of service, with Exhibits 1 through 5 attached, filed. (JS 5 Re-op. at direction of Judge Cox)

3-24-71 Copy of above Notice of Motion and Motion with attached exhibits forwarded to Judges Coleman and Russell, Judge Cox directed his placed in file.

3-24-71 ORDER: Directing plaintiffs and defendants to file parallel briefs within fifteen days, addressed to the validity or invalidity of House Bill 515 of the laws of Mississippi of 1971 approved by the Governor on March 23, 1971, setting out certain points for parties to brief on. ORDERED by

direction of the panel, signed by Judge Cox, filed and entered O.B. 1971, Pages 326 & 327.

3-31-71 Notice of Appearance of Constance Iona Slaughter as one of the attorneys of record, for plaintiff with cert. of service, filed.

3-31-71 Motion of R. Jess Brown, Attorney for leave to associate George Peach Taylor as Co-Counsel for plaintiffs, with cert. of service and Cert. of Good Standing from Northern Dist. of Alabama, filed.

4-8-71 Plaintiff's objections to House Bill 515, with cert. of service, filed.

5-12-71 Notice of Appearance of John L. Maxey, II, Geraldine H. Carnes, and Danny E. Cupit as additional counsel for plaintiffs, with certificate of service, filed.

5-13-71 Plaintiff's Additional Objection to House Bill 515, with certificate of service, filed. (Copy handed Judge Cox and Judge Russell)

2-14-68 Form letter addressed to Hon. Martin McLendon, Asst. Attorney General, State of Mississippi, notifying that within 45 days EXHIBITS would be destroyed if not picked up.

4-3-68 EXHIBITS destroyed.

5-17-71 Plaintiff's Motion for Affirmative Relief, with cert. of service, filed.

5-17-71 Plaintiff's Exhibits 1 thru 22, filed. (Exhibit 12 A, B & C are large maps placed in vault.) (Copy delivered to Judge Coleman by Plaintiff. Copy handed Judge Cox by Ann Crews. Copy handed Mrs. Randolph for Judge Russell)

5-18-71 Objections of Attorney General of Mississippi to Proposed Reapportionment Plans filed by the plaintiff, with cert. of service, filed. (Copy handed Judge Russell. Copy handed Mrs. Richmond for Judge Cox. Copy handed law clerk for Judge Coleman.)

5-18-71 OPINION and JUDGMENT: (Judges Coleman, Cox and Russell) All elections to be held district wide; districts electing more than one member all candidates shall qualify and be elected by posts; there shall be 33 Senatorial Districts for election of state legislators; (here opinion sets out each district described as to county, number

of Senators, Total Population of District and Percentage of Population above or below norm per seat); the Court adheres to County lines (rather than beat lines) as the best, fairest & most effective method of delineating districts for the election of legislators in the State of Mississippi; Hinds County is entitled to 12 representative; Harrison to 7 and Jackson to 5 (without George); a County which elects 3 representatives or less presents no problem because candidates are required to run by posts, however when a County, within its own borders, elects four or more representatives it would be ideal if it could be divided into districts for the election of one member to the district. Under the reapportionment plan herein adopted by this Court, the counties of Hinds, Harrison & Jackson elect 4 or more senators or representatives; the time left available makes it impossible to obtain dependable data, population figures, boundary locations so as fairly and correctly to divide these counties into districts for election of single members of the Senate or the House in the time for the elections of 1971 however the legislature to be chosen in 1975 and 1979 will be based on the Census of 1970; This Court states that as of January 1, 1972 it expects to appoint a Special Master to take testimony and make findings as to whether the Counties of Hinds, Harrison and Jackson may feasibly be divided into district of substantially equal numbers in population for the elections of 1975 and 1979 and to file his recommendations with this Court for appropriate adjudication. As to this, jurisdiction is retained. The reapportionment plan herein set out *as to all other Counties is final* and subject to no further review by this Court. As provided by Rule 52 this opinion shall constitute the findings of fact and conclusions of law in this case. This opinion shall also constitute and is hereby expressly declared to be the formal JUDGMENT of this Court and shall be docketed as such; the respective parties shall bear their own costs; a copy of

this opinion, duly certified shall be served upon each member of the Election Commission of the State of Mississippi and upon the Clerk of the Mississippi House of Representatives and the Secretary of the Miss. State Senate and due return made of such service. The Clerk of the House and the Secretary of the Senate are respectfully requested to have this opinion printed as soon as possible for the use of the membership of the respective branches of the legislature. This being the action of a Court of the United States sitting in equity and not State Action and this being for the purpose of complying with the one man-one vote requirements of the United States Constitution involving no racial discrimination to the exercise of the franchise under the Fifteen Amendment, we are of the opinion that it is not necessary that this reapportionment plan be submitted to the Attorney General of the United States or the Courts of the District of Columbia under the Voting Rights Act of 1965 as extended, 42 USC 1971, 1973 et seq. This judgment shall be in full force and effect from and after this date. Filed and entered OB 1971 Pages 759-784.

5-21-71 Motion of Plaintiffs to alter or amend judgment of 5-18-71 or in alternative Motion for immediate appointment of Special Master with instructions, and for other relief with certificate of service, filed.

5-22-71 Order Amending and Supplementing Judgment dated May 18, 1971, filed and entered OB 1971, P. 796-799. Certified copy served by U.S. Marshal on 5-22-71 on Heber Ladner and George Peach Taylor, and on 5-24-71 on John Bell Williams and A. F. Summer.

5-22-71 Order overruling motion of Plaintiffs for appointment of special master to create single member district in Hinds County, Filed and entered OB 1971, P. 800-801. Certified copy served by U.S. Marshal 5-22-71 on Heber Ladner and George Peach Taylor and on 5-24-71 on John Bell Williams and A. F. Summer.

5-24-71 NOTICE OF APPEAL of Plaintiffs and The Mississippi Freedom Democratic Party to U. S. Supreme Court with certificate of service, filed.

5-24-71 Bond for costs on appeal in amount of $250.00 filed and paid into registry of Court.

5-24-71 Motion of Plaintiffs for stay of judgment and injunction pending appeal with certificate of service, filed.

5-24-71 Certified copy of Notice of Appeal mailed John F. Davis, Clerk, U.S. Supreme Court.

5-25-71 Order denying motion of Plaintiff to stay judgment and on alternative motion for a restraining order pending appeal, Filed and entered OB 1971, P. 806. (Copy mailed attorneys, handed Judge Cox (by sue) and mailed Judges Russell and Coleman)

5-28-71 Court reporter's transcript of hearing on 5/14/71 in Jackson before Judges Coleman, Cox and Russell, with certificate, filed.

6-3-71 Request to Clerk of Plaintiffs to certify and transmit partial record on appeal with certificate of service, filed.

6-4-71 Certified copy of Per curiam ORDER OF SUPREME COURT OF THE UNITED STATES: the judgment below is stayed until 6/14/71. The District Court is instructed to devise and put into effect a single-member district plan for Hinds County by 6/14/71 and extend the 6/4/71 filing date for legislative candidates from Hinds County to appropriate date so those candidates and the State of Miss. may act in light of new districts into which Hinds County will be divided. Chief Justice, Justice Black and Justice Harlan dissent and reserve the right to file an opinion to that effect, filed and entered OB 1971, pages 868 thru 872.

6-5-71 EXHIBITS: P-1 through P-3, filed.

6-7-71 Dissenting Opinion of Supreme Court Mr. Justice Black, with whom The Chief Justice and Mr. Justice Harlan join, file. (Copy handed Sue for Judge Cox, Madge for Judge Russell and mailed Judge Coleman). Filed and entered OB 1971, Pages 872-A thru 872-C.

6-7-71 Court Reporter's Transcript of proceedings had on 6-5-71 at Jackson, Mississippi before Judges Coleman, Cox and Russell, filed.

6-8-71 ORDER appointing William D. Neal as Special Master in this case to propose a valid plan, if such be possible, for division of Hinds County as directed by the Supreme Court, to be done and filed not later than 6-14-71, and sooner if possible; said Special Master shall file with this Court a written report of his findings, conclusions and recommendations; Special Master shall be allowed expenses and just and reasonable compensation for his services and other necessary costs as allowed and approved by this Court, to be taxed according to law. Filed and entered OB 1971, P. 884-887. (Copy handed A. F. Summer, Atty. General and 2 copies handed Houston J. Patton for George Peach Taylor and John Maxey)

6-8-71 Oath of Special Master executed, filed.

6-14-71 Report of Special Master William D. Neal with Exhibits A and B attached, filed. (Copy handed John Maxey, George P. Taylor and James A. Haddad (Atty. Gen's. Office) Copy mailed Judge Coleman, handed Judges Cox and Russell)

6-14-71 Notice to Attorneys for Plaintiffs and Defendants to file any exceptions, if any, to above report by noon June 15, 1971. Filed and entered OB 1971, P. 898. (Copies handed Maxey, Taylor and James Haddad for Attorney General)

6-15-71 Motion of Defendants to modify Opinion, Findings of Fact, Conclusions of Law and Judgment of May 18, 1971, as Amended May 21, 1971 with certificate of service, filed. (Copy handed Judge Russell, Judge Cox and Mailed Judge Coleman)

6-15-71 Response of Defendants to Report of Special Master, filed. (Copy handed Judges Russell & Cox, mailed Judge Coleman)

6-15-71 Motion of Plaintiffs to refer certain matters to Special Master with certificate of service, filed. (Copy handed Judges Russell and Cox, mailed Judge Coleman)

6-15-71 Objections of Plaintiffs to report of Special Master with certificate of service, filed. (Copy handed Judges Russell and Cox, mailed Judge Coleman)

6-15-71 Motion of Plaintiffs for hearing of objections to Report of Special Master with certificate of service. (Copy handed Judges Russell and Cox, mailed Judge Coleman)

6-15-71 Amendment of Plaintiffs to objections to report of Special Master with certificate of service with Appendix A, B and C attached, filed. (Copy handed Judges Russell, and Cox, mailed Judge Coleman)

6-16-71 OPINION of Court on Remand from Supreme Court Staying Order dated 6-3-71 with Exhibits A and B (Exhibit B having exhibits A and B also) attached, filed.

6-16-71 ORDER: Motion of defendants to modify former opinion and finding of facts and conclusions of law denied; Motion of Plaintiffs to re-refer case to Special Master denied; Candidates for office of Senator and Representative in the Mississippi Legislature for Hinds County for 1971 elections shall run and be elected from county at large and candidates shall have until noon, Saturday June 19, 1971, to qualify for said election; This Order is interlocutory in character and Special Master (William D. Neal) will not be discharged but remain available to the Court for further services herein if necessary; Twenty-Five copies of this Order with supporting and underlying attachments shall be transmitted by the Clerk of this Court by air mail to the Clerk of Supreme Court of U.S. as the report of this court on its findings and clusions [sic] on the record made by Plaintiffs in this case. Filed and entered OB 1971, P. 1014-1017. (Copies handed Maxey for George Taylor, mailed A. F. Summer)

6-16-71 Twenty-Five certified copies of Opinion with Attachments and (Twenty-five certified copies of Order forwarded by air mail to E. Robert Seaver, Clerk, U.S. Supreme Court, Washington, D.C.

1-26-72 Per Curiam Order from the Supreme Court. ". . ., the judgment of the District Court is va-

cated, except insofar as it applied to the 1971 elections, and the case is remanded to the District Court for further proceedings consistent with this opinion.", filed.

2-28-72 ORDER: Certified copy of Order from Supreme Court: The judgment of the District Court is . . . "vacated with costs, except insofar as it applied to the 1971 elections; and that this cause be, and the same is hereby, remanded to the United States District Court for the Southern District of Mississippi for further proceedings consistent with the opinion of this Court.", filed and entered OB 1972, Page 277.

4-12-72 Bill of Costs in the sum of $100.00, with copy of letter from Supreme Court Clerk dated 2-23-72 attached, filed.

4-24-72 Costs in the sum of $100.00 taxed.

10-4-72 Certified copy of ORDER: Clerk of Court issue check in amount of $2,750.00 payable to Lawyers' Committee for Civil Rights Under Law, representing cash refund of cash bond on appeal in each of eleven cases listed, filed and entered OB 1972, page 1196. (DMR)

10-17-72 Certified copy of ORDER: Clerk of Court issue check in amount of $750.00 payable to Lawyers' Committee for Civil Rights Under Law, representing cash refund of cash bond on appeal in each of above cases (3641, 3830 & 4808), filed and entered OB 1972, Page 1196 (DMR)

1-3-73 Pltf's. motion for appointment of special master with instructions, and reference to establish single member districts for Hinds, Harrison & Jackson counties, with cert. of service and notice of motion on 1/12/73 in Jackson before Judge Cox in Jackson, filed.

1-4-73 ORDER FOR DEFERMENT: Pltfs. directed to immediately contact proper officials of Mississippi Legislature and make known their contentions and make available all date to enable Legislature to dispose of questions relating to Hinds, Harrison and Jackson Counties within time indicated. Action of the Court on appointment of a Master will be disposed of by proper order at a later time., Ordered for the Entire Court, filed and entered OB 1973, pages 4 & 5. (WHC) (Copies mailed Mr. Summer, Mr. Taylor and Judges Coleman & Russell. Anne Crews handed copy for Judge Cox)

1-22-73 Motion of George Peach Taylor for leave to Withdraw as Counsel for Plaintiffs, with cert. of service, filed.

1-26-73 Motion of pltfs. for leave to associate Frank R. Parker as Co-Counsel with exhibits attached, with cert. of service, filed.

2-9-73 Defendants Submission pursuant to Order for Deferment and Motion for Approval of Apportionment of the Mississippi Legislature with Notice of Hearing at a time and place convenient to the Court, certificate of service and attachment, filed.

3-13-73 ORDER FOR PLAINTIFFS TO SHOW CAUSE: Pltfs. are cited to show cause on 4/20/73 at 9:00 AM in Courtroom No. 2 in Jackson, Miss. why legislative enactments as passed and adopted should not be approved under the rule of Supreme Court as being in compliance with the "one person, one vote" rule. An attested copy of this order delivered by U. S. Marshal at office of one of the attys. for pltf. shall constitute service, filed and entered OB 1973, pages 414 & 415. (WHC) (Certified copy handed U. S. Marshal to be delivered to John L. Maxey and Judge Russell) (Copies mailed Judge Coleman, and William Allain, Asst. Atty. Gen.) (Per Anne Crews)

3-13-73 Marshal's return on Order to Show Cause executed as to Judge Russell and John Maxey on 3/13/73, filed.

3-14-73 Plaintiffs' objections to House Bill 446 and Senate Bill 1701, with cert. of service, filed. (Copy handed J. Nall for Judge Cox, handed M. Randolph for Judge Russell and mailed to Judge Coleman)

4-5-73 Notice of plaintiffs to take deposition of Rep. Stone D. Barefield on 4-10-73 in Hattiesburg,

Miss. beg. at 10:00 a.m., with cert. of service, filed.

4-5-73 Deft. William L. Waller's Motion for Protective Order against taking of deposition of Rep. Stone Barefield and staying all further discovery and Notice for hearing before Judge Cox on 4-5-73, with cert. of service, filed.

4-5-73 ORDER: George Peach Taylor permitted to withdraw as counsel for plaintiffs and John L. Maxey, II and Frank R. Parker remain as and be substituted as counsel in his place, filed and entered OB 1973, Page 510 (copy mailed attorneys—copy handed atty. Frank Parker)

4-5-73 ORDER: deft. Gov. Waller's Motion for Protective Order on Discovery denied except that pltfs. in their discovery shall be limited to 5 depositions of members of the Miss. Legislature and are prohibited from taking depositions of newspaper reporters or of members of the staff of the Miss. Legislature or staff persons employed for purposes of working on the state reapportionment plan but if pltfs. can show good cause for necessity of additional depositions of legislators they may apply to Court by motion for such further discovery, filed and entered OB 1973, Page 511 (copy handed atty. Parker, mailed other attorneys)

4-9-73 Defendant's submission concerning present issues before the Three Judge Court, with cert. of service and letter from Heber Ladner, Jr. stating a copy to be mailed to individual judges, filed.

4-10-73 Pltf's. notice of deposition upon oral examination of Rep. Horace Lester and Sen. Con Maloney on 4/13/73 in Jackson, with cert. of service, filed.

4-12-73 Amended submission pursuant to order for deferment and motion for approval of apportionment of the Mississippi legislature with Exhibit I & II and cert. of service, and notice of motion at time and place convenient to the Court, filed.

4-12-73 Letter from A. F. Summer stating copies of above motion mailed individual judges, filed.

4-13-73 Attorney Frank Parker's return on deposition

subpoena executed as to Rep. Horace B. Lester on 4-12-73, filed.

4-17-73 Pltf's. motion for continuance, with cert. of service, filed. (Copies placed in Judges' files.)

4-17-73 Pltf's. motion for substitution of successor public officials as defendants, with cert. of service, filed. (Copies placed in Judges' files.)

4-17-73 Pltf's. notice of above two motions on 4/20/73 at 9:00 AM in Jackson, filed.

4-18-73 Deposition of Horace B. Lester taken by pltf. on 4/13/73, filed.

4-18-73 Deposition of James C. Maloney taken by pltf. on 4/13/73, filed.

4-19-73 Plaintiffs' Objections to House Bill 1389 and Senate Bill 2452, and Prayer for Injunctive Relief with Exhibits A, B and C attached, with cert. of service, filed.

4-19-73 Deposition of Stone D. Barefield, Vols. I & II, taken on 4-10-73 in Hattiesburg, Miss., with Exhibits 1 through 7 attached in separate brown manila envelope, filed.

4-19-73 Deposition of William Winter taken in Jackson, Miss. on 4-17-73, with Exhibits 1 through 5 attached, filed.

8-27-73 Deposition of Harold E. Sweeney, Jr. taken by pltf. on 4/20/73, filed.

8-27-73 Deposition of Harold E. Sweeney, Jr., Volume II taken by pltf. on 4/20/73, filed.

8-27-73 Exhibits 1 through 12 to deposition of Harold E. Sweeney taken by pltf. on 4/20/73, filed. (EXHIBITS 1 & 2 in BROWN ENVELOPE IN VAULT. EXHIBITS 3 through 12 ARE LARGE MAPS AND PLACED IN VAULT)

3-19-74 Large roll of exhibits (maps & Charts) received from Supreme Court and placed in vault.

4-26-74 Plaintiff's motion for leave to file supplemental complaint, with copy of Supplemental complaint and attachments, Cert. of service and notice of motion on 5/3/74 before Judge Cox in Jackson, filed. (Copy for Judge Cox put in Glenda Bond's box to be handed to Judge Cox) (Other copies placed in files per Bobbie Price)

5-10-74 ORDER denying plaintiffs' motion for leave to

file supplemental complaint, filed and entered OB 1974, page 753. (Copies mailed all attys. of record) (Copies placed in Judge's files and not mailed per B. Price)

5-20-74 Motion for Review and Reconsideration by Three-Judge Panel of Plaintiffs' motion for leave to file supplemental complaint, with attachment and cert. of service, and notice of motion before Judges Coleman, Russell and Cox on 5/31/74 in Jackson at 9:00 AM, filed. (Copy handed Glenda Bond for Judge Cox and mailed Judges Coleman and Russell)

10-1-74 Notice of plaintiff of taking of deposition upon written questions, with Questions to be Propounded, cert. of service and Exhibits A thru I, filed.

10-11-74 Plaintiffs' request for admission of facts and genuineness of documents, with cert. of service and Exhibits 1 thru 27, filed. (EXHIBITS 1 THRU 27 placed in separate folder in file and marked)

10-15-74 Pltf's notice of depositions upon oral examination of Dr. James W. Loewen on 10-17-74 and Dr. Gordon G. Henderson on 10-18-74, with cert. of service, filed.

10-28-74 Notice of plaintiffs to take depositions of Rep. Robert Clark and Dr. Gordon G. Henderson on 11-1-74, with cert. of service, filed.

11-7-74 Defendants' response to pltfs.' request for admission of facts and genuineness of documents, with cert. of service, filed.

11-15-74 Plaintiff's motion to compel answers to plaintiffs' request for admission of facts and genuineness of documents, with Exhibit A & B, and notice of motion on 12/2/74 in Gulfport before Judge Russell at 9:00 AM, with cert. of service, filed. (Copy handed Glenda for Judge Cox and mailed Judges Coleman & Russell)

12-3-74 DEPUTY CLERK SHEET: Hearing in Gulfport on 12/2/74 for 15 min. on motion to compel answers to plaintiffs' request for admissions of facts and genuineness of documents. ACTION TAKEN: Deft. granted 10 days to submit brief—

under advisement. (Judge Russell discovered, after hearing above motion, that Judge Cox is the Managing Judge—Judge Russell will contact Judge Cox.)

12-16-74 Deposition of Interrogatories to Hon. J. Stanley Pottinger, filed.

1-17-75 Letter written to U.S. Supreme Court requesting they search their records to see if a portion of this case file is still in their office. List of documents that are missing attached to letter. (Sue)

1-24-75 Plaintiffs' Notice to take Depositions of Rims Barber and Dr. David Valinsky on February 3rd and 7th, with Certificate of Service, filed.

1-29-75 Deposition of Dr. James W. Loewen with Exhibits, taken by pltfs., filed.

1-30-75 Pltf's. motion for an order to defendants to show cause why the current State Legislative Reapportionment should not be enjoined, with cert. of service and notice of motion on 02/07/75 in Jackson at 9:00 AM, filed. (Copies mailed Judges Russell and Coleman and placed in Glenda's Box for Judge Cox.)

2-5-75 Amendment to the interrogatories of the Honorable J. Stanley Pottinger, filed.

2-7-75 Deposition of Dr. Gordon G. Henderson taken by pltfs on 11/1/74, with Exhibits 1 thru 17 attached, filed.

2-7-75 EXHIBITS: P-1 through P-20 and D-1 and D-2; Filed.

2-7-75 Deposition of Rims Barber taken by pltfs. on 2/3/75 in Jackson, Miss., filed.

3-7-75 Bill of William D. Neal in amount of $602.58, with Exhibit A, paid by State Attorney General, filed.

3-12-75 Pltf's. notice of deposition of Henry J. Kirksey on 03/17/75, with cert. of service, filed.

4-9-75 Deposition of Henry J. Kirksey taken by pltf. on 03/17/75 with Exhibits, Filed. (EXHIBITS WRAPPED, MARKED AND PLACED IN VAULT—LARGE SQUARE PACKAGE)

4-11-75 JUDGMENT: As managing judge and by direction of the entire Court, it is ORDERED: Entire proceedings before this Court involving the 1967 and 1971 reapportionment of the Legislature are

hereby dismissed without prejudice; Plaintiffs are directed to file in this cause, as Civil Action No. 3830(A), an amended complaint to attack said 1975 enactments of the Legislature of Miss. within 5 days after receipt of a copy of this order; Defts. shall file their answers within 5 days after receipt of copy of such amended complaint; This Court upon receipt of such pleadings will immediately proceed to convene and conduct hearing on questions presented and make prompt and proper disposition thereof. A Copy of the pleadings of the parties shall be mailed directly to the three members of this Court at their proper addresses by the parties, filed and entered OB 1975, pages 661-662. (Copies mailed Judges Coleman & Russel by G. Bond.) (Copies mailed Mr. Brown, Parker, Slaughter, Maxey, Carnes and A. F. Summer.)

4-15-75 AMENDED COMPLAINT for Injunctive and other Equitable Relief, with Exhibits 1 thru 4 and cert. of service, filed. (No Process-Attys. directed to mail copies to Judges per Order of 04/11/75.)

4-17-75 Pltf's. motion to alter or amend judgment, with cert. of service and notice of motion on 04/25/75 in Jackson at 9:00 AM, filed. (Copies mailed Judges Coleman and Russell and placed in Glenda's box for Judge Cox.)

4-21-75 ANSWER to amended complaint for injunctive relief and other equitable relief, with cert. of service, filed. (Copies mailed Judges Coleman & Russell and placed in Glenda's box for Judge Cox.)

4-23-75 Deft's. submission pursuant to Order and motion for approval of the 1975 Apportionment Plan for the Mississippi Legislature with cert. of service and Exhibits I thru IV and indefinite notice of motion, filed.

5-7-75 EXHIBITS: P-1 through P-35; and D-1, filed.

5-7-75 Pltf's. motion for prompt and immediate decision and for other related relief, filed. (Copy mailed Judge Coleman and handed Gwen and Glenda for Judges Russell and Cox.)

5-14-75 Pltf's. motion to supplement the record, with cert. of service and Affidavit of Henry Klibanoff and attachment, filed. (Frank Parker's letter of transmittal stated he had mailed copies to members of three judge court at direction of Court)

5-14-75 Court Reporter's transcript of proceedings held in Jackson on 05/07/75 before Judges Coleman, Cox and Russell, filed.

5-20-75 OPINION: Except as to Harrison County, the complaint will be dismissed with prejudice; as to that County, jurisdiction will be retained to effectuate the purposes with reference thereunto stated; counsel for parties are directed to forthwith prepare and submit a decree accordingly, which any Judge of this Court is hereby authorized to enter for the Court; the respective parties will bear their own costs, filed. (Judges Coleman, Russell & Cox) (copy handed to all attorneys of record)

5-22-75 JUDGMENT: Amended Complaint dismissed with prejudice except as to Harrison County, as to which the Court retains jurisdiction for the limited purposes set out in the Court's opinion of May 19, 1975; that the parties bear their respective costs, filed and entered OB 1975, pages 845-846 (WHC) (copy mailed attys. Frank Parker and John L. Maxey, II; copy handed Ed Noble, Attorney General's office)

5-22-75 Plaintiffs' Notice of Appeal to the Supreme Court of the United States from judgment entered 5-22-75, with cert. of service, filed.

5-23-75 Pltf's. motion for stay of judgment and stay of the 1975 Miss. Legislative Elections pending appeal, with cert. of service, filed.

5-23-75 ORDER: Motion for an order enjoining the 1975 Miss. legislative elections pending appeal to Supreme Court is denied, filed and entered OB 1975, page 851. (Copies mailed Judge Coleman and Judge Russell, and placed in Glenda's box for Judge Cox. Copies mailed attys. of record.)

6-6-75 Plaintiff's Motion Temporary Restraining Order. (Copy handed G. Bond, for Judge Cox,

Copy handed G. Bryant for Judge Russell, and Copy mailed Judge Coleman.

6-6-75 ORDER: Motion for temporary Restraining Order, is hereby denied, filed and entered OB 1975, page 969. (Copies mailed Judge Coleman and Judge Russell, and placed in Glenda's box for Judge Cox. Copies mailed Attys. for record).

6-9-75 ORDER SUPREME COURT OF THE UNITED STATES, Whereof, it is Ordered that the Judgment of United States District Court in this cause is hereby, reversed with costs, and same is remanded to the United States District Court for the Southern District of Mississippi for further proceedings in conformity with the opinion of this Court. It is further ordered that the said appellants, Peggy J. Connor, et al, recover from William L. Waller, Governor of Mississippi, One Hundred Dollars ($100) for their costs herein expended, filed and entered OB 1975 page 972. (Copies mailed to Jess Brown, Frank R. Parker, John L. Maxey, II and A. F. Summer).

6-9-75 Motion for Injunctive Relief and to enforce the mandate of the United States Supreme Court, with certificate of service, filed.

6-10-75 ORDER: Motion for Temporary Restraining Order to stay and suspend the 6/6/75, qualifying deadline for party candidates for membership in the Miss. House of Representatives and the Miss. Senate is denied, filed and entered OB 1975, page 980. (Copies mailed attys. of record and placed in Glenda's and Gwen's boxes. Copy mailed Judge Coleman).

6-11-75 Motion of USA to intervene as plaintiff, with cert. of service, filed. (Copy mailed Judge Coleman & placed in Courtroom Deputy's boxes for Judge Cox & Russell.)

6-11-75 ORDER: USA is allowed to intervene as party plaintiff, filed and entered OB 1975, page 998. (Copies mailed attys. of record and Judge Coleman, and placed in Glenda's & Gwen's box for Judges Cox & Russell.)

6-11-75 Complaint in intervention with certificate of the Attorney General of the U.S., filed. (Stated no

service was required) (Copy mailed Judge Coleman and placed in Courtroom Deputy's box for Judges Cox & Russell.)

6-12-75 Motion of USA for preliminary injunction, with cert. of service, filed. (Copy handed Glenda for Judge Cox, handed Gwen for Judge Russell & mailed Judge Coleman.)

6-19-75 Deft's. ANSWER to complaint in intervention, with cert. of service, filed.

6-19-75 Deft's. petition for a Writ of Mandamus, with cert. of service, filed.

6-19-75 Defts'. objections to pltfs' motion for injunctive relief and to enforce the mandate of the Supreme Court of the U. S. and to the motion of the USA for preliminary injunction, with cert. of service, filed.

6-19-75 Court reporter's transcript of proceedings held in Jackson on 06/12/75 before Judges Coleman, Cox and Russell, filed.

6-20-75 EXHIBITS: J-1 and Court-1, filed.

6-20-75 ORDER VACATING JUDGMENT: It is the judgment of the Court that all pleadings involving the 1967 and 1971 Legislature should be and remain as an active part of the entire matter before the Court and to that end said Judgment of the Court dated April 10, 1975 and filed 04/11/75 is rescinded and vacated, filed and entered OB 1975, page 1047. (Copies mailed attys. and Judges Coleman & Russell and handed Judge Cox.)

6-24-75 Friend of the Courts Petition of Thomas G. Russell and motion for Single Member Districts, with cert. of service, filed. (Copy handed Judge Cox and mailed Judges Coleman and Russell.)

6-23-75 Court Reporter's Transcript of proceedings held in Jackson on 06/20/75 before Judges Coleman, Cox and Russell, filed.

6-23-75 ORDER: Dept. of Justice to file memoranda with the Court setting forth, district by district, facts of record demonstrating unconstitutional dilution of black voting strength as asserted by Dept. of Justice, plaintiffs may file similar memoranda as to districts to which they have objected, if they so desire. Further this Court,

where necessary, proposes to alter any district to remedy any existing unconstitutional dilution of black voting strength. Memoranda need not be addressed to Hinds, Harrison and Jackson Counties. Parties advised that the Court proposes to formulate a temporary plan for election of Senators and Representatives for 1975 for election of Senators and Representatives for 1975 election ONLY, first primary schedules for 08/05/75. A permanent plan for reapportionment cannot be now formulated due to lack of time. When permanent plan for election of legislators in quadrennial elections of 1979 has been accomplished, special elections may be ordered in those legislative districts where required by law, equity, or the Constitution of the U. S. Legislative districts altered by temporary plan for 1975, candidates will be allowed adequate time for qualification in the altered districts; however, those already qualified will remain. Scheduled elections for members of the legislature in 1975 will not be postponed. (This order sets out the redistricting of Jackson, Harrison and Hinds Counties.) Ordered by unaninous [sic] direction of the Court, filed and entered OB 1975, pages 1068-1073. (Copies handed attys. of record and handed Judges Cox & Coleman and mailed Judge Russell by Anne Crews. Copy taken to Washington by Charlie Sutherland for Mr. Gerald Jones.)

6-25-75 Copy of letter from Judge Cox to Mr. Arny Rhoden, U. S. Marshal dated 06/25/75, directing that a copy of above order be delivered by special messenger to Mr. Gerald Jones of U. S. Dept. of Justice, filed.

6-27-75 Pltfs' Supplemental Submission on Hinds County Single Member Plans with Exhibits A thru E attached, with cert. of service, filed. (Frank Parker stated to G. Burdette he mailed copy to each of the three Judges.)

7-2-75 Marshal's return on letter from Judge Cox to Mr. Rhoden, executed, filed.

7-2-75 Motion of City of Jackson, Miss., A Municipal Corporation, to intervene as party plaintiff, filed.

(Copy handed Judge Cox by Mr. Smith and mailed Judges Coleman and Russell.)

7-2-75 Pleading of the City of Jackson, Mississippi as Intervener, with cert. of service, filed. (Mr. Smith stated Judge Coleman told him to file the above and a hearing would be had on Mon. July 7, 1975.) (Copy handed Judge Cox by Mr. Smith and mailed Judges Coleman & Russell.)

7-3-75 ORDER allowing the City of Jackson, Miss. to file an amicus curiae brief within 3 days from or after 07/03/75, filed and entered OB 1975, page 1106. (Copy handed Mr. Smith of City and mailed other attys. of record.) (Copy handed Judge Cox and mailed Judges Coleman & Russell.)

7-3-75 Pltf's. objections to Court-ordered districts established by Order of 06/25/75, with cert. of service, filed.

7-7-75 Defendants' objections to the June 25, 1975, Court-Ordered Legislative Districts, with cert. of service and Appendix A & B, filed. (Copies handed Judges Cox, Russell & Coleman.)

7-2-75 Letter from Conner Cain of Stone County, Miss. dated 06/30/75 to Mr. Thomas re grievances about Order of June 25, 1975, filed.

7-2-75 Letter from Mack McInnis of Greene County, Miss., dated June 30, 1975 to Clerk of Court re new Representative Post, filed.

7-7-75 EXHIBIT: D-1, filed.

7-8-75 ORDER establishing certain temporary districts for the election of Senators and Representatives in the Miss. Legislature for the year 1975 Only. Clerk of Court shall forthwith furnish a true copy to the Secty. of State of the State of Miss. and to each County Registrar in the affected county for the information of those charged with the duty of preparing and distributing the 1975 primary election ballots, filed and entered OB 1975, pages 1137-1178. (Copies handed attys. of record. Copies mailed Judges Coleman and Russell and handed Judge Cox by A. Crews.)

7-8-75 Plaintiff's. Modified Mitchell Plan No. 2, with

cert. of service and attachments, filed. (Copies mailed to Judges by Mr. Parker)

7-9-75 Certificate of mailing certified copies of Order filed on 07/08/75 to Heber Ladner, Secretary of State and to Circuit Clerks of named counties, with attached list, filed.

7-10-75 U. S. Dept. of Justice House Plan for Hinds County, filed. (Copies delivered by Highway Patrol to all 3 Judges on 09/09/75)

7-10-75 Special Master's House Plan for Hinds County by New Voting Precints July 9, 1975, filed. (Copies delivered by Highway Patrol to all Judges on 09/09/75)

7-11-75 ORDER establishing certain temporary Districts for the election of Senators and Representatives in the Miss. Legislature for the Year 1975 only; Parties shall file with the Clerk of Court plans for permanent reapportionment of the Legislature. Hoyt T. Holland, Jr. is designated to serve as Special master in this case to serve under our orders and directions, filed and entered OB 1975, pages 1193-1239. (Copies distributed to Judges and all attys. of record.)

7-14-75 PER TELEPHONE INSTRUCTIONS OF JUDGE COLEMAN: Precinct 8 interlined on page 40 of Order filed on 07/11/75.

7-21-75 ORDER: To correct an error in transcription, it is ordered that Order dated 07/11/75, with reference to District 43 for the election of Representatives is corrected as contained in this order, filed and entered OB 1975, pages 1270-1271. (Judge Coleman mailed copies to Judges Cox & Russell. Copies mailed all attys. of record.)

7-21-75 Pltf's. motion to alter or amend judgment with cert. of service and attachments, filed.

7-23-75 Deft's. response to motion to alter or amend judgment, with cert. of service, filed.

7-24-75 Motion of the United States for amendment of judgment, with cert. of service, filed. (Copies mailed all Judges by U. S. Atty's. office.)

8-1-75 ORDER: the Court declines to set a deadline of 2-1-76 for completion of a permanent plan for reapportionment of Miss. Legislature but reiterates

its firm determination to have such plan approved before 2-1-76; as to all instances in which a special election may be required, the Court expects to direct that same shall be held in conjunction with the 1976 Presidential election so as to save the expense of special elections as far as possible; on pltfs' motion to delete that portion of the Court's order appointing Hoyt T. Holland, Jr. as special master, the Court expects to formulate its own permanent plan and the duties of Mr. Holland will be only to assist in that regard; the matter of costs and attys. fees will be decided in the final judgment establishing the perm. plan—filed and entered OB 1975, pages 1312-1314 (copy handed attorneys of record except copy mailed John Maxey at his request) (copy mailed Judges Coleman and Russell, handed Judge Cox)

8-1-75 ORDER: the population figures released by U.S. Bureau of Census giving its population estimates as of 1973 shall be used as the basis of and for the establishment of a permanent plan of reapportionment of the Miss. Legislature—the parties in compiling the various plans to be submitted to the Court will be governed accordingly, filed and entered OB 1975, pages 1315-1317 (copy handed attorneys of record except copy mailed John Maxey at his request) (copy mailed Judges Coleman and Russell, handed Judge Cox)

10-8-75 Motion of USA for extension of time for filing plans for permanent apportionment, with cert. of service, filed. (Copies handed Glenda for distribution to three Judges)

10-9-75 ORDER: U.S.A. granted up to and including 10-22-75 to file permanent plans for reapportionment of legislature, filed and entered OB 1975, Page 1651. (Copy mailed attys. Parker, Maxey and Atty. Genl., copy handed U.S. Atty.) (Copy mailed three judges)

10-9-75 Defendants Submission Pursuant to Order, with cert. of service, filed. (Copy mailed three judges)

10-14-75 ORDER: motion of U.S.A. for extension of time until 10-22-75, filed 10-8-75, granted, filed and entered OB 1975, page 1669 (J. P. COLEMAN)

(Copy mailed attorneys) (copy mailed Judges Coleman and Russell, handed Judge Cox)

10-15-75 Pltf's. submission of permanent Legislative Reapportionment Plans, with cert. of service and Exhibits, filed. (Copies mailed all three Judges by Frank Parker)

10-20-75 Report to the Court of Department of Justice on special census for Oktibbeha, Lowndes and Noxubee Counties, with cert. of service, filed. (Copies mailed to Judges Coleman and Russell and handed Glenda for Judge Cox.)

10-24-75 ORDER: USA intervenor, and the Attorney General of the U. S. as soon as practical after entry of this order shall file with this Court the most current evidentiary data as set out in Order and USA, intervenor shall file a cert. with the Court listing by Counties, alphabetically, the offices to which Negro candidates aspired in said elections, the name of such candidates, and whether or not they were elected, filed and entered OB 1975, pages 1812-1814. (Copies mailed attys. Parker, Slaughter, Smith, Maxey, Summer, Allain, Hauberg and Judges Coleman & Russell and handed Glenda for Judge Cox.)

10-31-75 Alternative Plans submitted by the United States Pursuant to Order of 07/11/75, with Exhibits, attachments and cert. of service, filed.

1-26-76 Submission of the United States pursuant to October 24, 1975 Court Order, with attachments and cert. of service, with request for hearing date on 02/10/76, filed. (Per tel., Mr. Jones of Dept. of Justice stated he had mailed each of the three Judges a copy of this on 01/24/76)

1-29-76 ORDER: Further hearing and decision of this case will be deferred until the Supreme Court shall have decided cited cases, at which time this Court will bring this case to trial forthwith, filed and entered OB 1976, pages 238-240. (Copies mailed Mr. Parker, Smith, Maxey, Summer & Hauberg) (Copies mailed Judges Russell and Coleman. Cpy. handed Glenda for Judge Cox.)

2-9-76 Pltf's. supplemental submission of permanent Legislative Reapportionment Plans, with cert. of service and attachments, filed. (Copies handed Glenda & Gwen for Judges Cox & Russell and mailed Judge Coleman.)

5-21-76 Copy of letter from SUPREME COURT with copy of OPINION OF SUPREME COURT, filed.

5-24-76 Certified copy of ORDER OF SUPREME COURT OF U.S.: Motion to file petition for Writ of Mandamus is granted and petition is continued to 06/17/76, filed and entered OB 1976, page 980. (Copies mailed Judges Coleman and Russell and placed in Glenda's box for Judge Cox.)

5-26-76 Request of USA for hearing date, with cert. of service, filed. (Copy placed in Gwen's box for Judge Cox and mailed other Judges.)

5-27-76 ORDER: Three Judge Court will convene on 06/02/76 in Jackson for further proceedings. Clerk of Court will forward 25 duly authenticated copies of this Order to the Clerk of the Supreme Court of the United States, and will furnish copies to all counsel of record, filed and entered OB 1976, pages 987-988. (25 certified copies mailed Clerk of Supreme Court; Copies mailed attys. of record; Cpy. in Glenda's box for Judge Cox and mailed Judges Russell & Coleman.)

6-1-76 Request of U.S.A., Intervenor, for continuance of hearing scheduled for 6-2-76 until after 6-10-76, with cert. of service, filed.

6-1-76 ORDER: hearing set for 6-2-76 rescheduled for 6-15-76 at 9 a.m., Fourth Floor, U.S. Courthouse, Jackson, Ms., filed and entered OB 1976, pages 1017-1018 (JPC) (copy mailed attorneys; copy handed G. Bond for Judge Cox, mailed Judges Russell & Coleman)

6-14-76 Amendments to pltfs' supplemental submission of permanent plans requested by Court, with attachment and cert. of service, filed. (Copy placed in Glenda's box for Judge Cox and mailed Judges Coleman and Russell.)

6-15-76 Preliminary observations of Judge Coleman, before Judges Russell and Cox on hearing in Jackson on 06/15/76, signed by all three judges, filed.

6-15-76 Pltf's. motion for an award of attorney's fees with affidavit of Frank R. Parker and cert. of service, filed in Court Room.

6-15-76 Motion of United States that all pleadings, memoranda, etc. be filed in record, with cert. of service, filed in Court Room.

6-15-76 Affidavit of James F. Manning with Exhibits, filed.

6-15-76 MEMORANDUM on adoption of permanent apportionment plan of Justice Dept., with cert. of service and attachments, filed in Court Room.

6-16-76 ORDER appointing William D. Neal Associate Special Master to perform functions indicated. Clerk of Court will notify all counsel, by copy of this order, and will make available to Mr. Neal the right to examine plans, papers and documents on file in this case, filed and entered OB 1976, pages 1086-1087. (Copies mailed all attorneys of record. Copies handed the Judges by Jennie)

7-19-76 Court Reporter's Transcript of proceedings held before Judges Coleman, Russell and Cox in Jackson on 06/15/76, filed.

8-2-76 Pltf's. motion for a prompt and immediate decision on a final court-ordered legislative reapportionment plan and special elections with cert. of service and arbitrary notice of motion, filed. (Frank Parker stated to Iris that he was mailing file-stamped copies to each of Judges.)

8-10-76 Letter from United States Circuit Judge James P. Coleman to Clerk of Court dated August 9, 1976 in re to motion of Frank Parker for speedy disposition, filed. (Copies mailed all attorneys of record.)

8-10-76 Response of defendants to pltfs'. motion for an immediate decision, with cert. of service, filed. (Copies mailed to members of the Three-Judge Court, per letter from A. F. Summer in file).

8-11-76 Letter from U. S. Circuit Judge James P. Coleman dated 08/10/76 to Clerk requesting that attorneys be advised that Judge Cox would return to the office on 08/23/76, filed. (Copies mailed attys. of record.)

8-24-76 JUDGMENT: Ordered, adjudged and decreed;

1. The permanent plans for the reapportionment of the Legislature of St. of Miss., as hereinafter set forth, shall be in force and effect for the regular quadrennial elections of 1979 and thereafter until altered according to law. 2. Except in those instances in which a special election may hereinafter be ordered, these plans shall not affect the terms of office of legislators elected in 1975. 3. In the event of the death or resignation of a legislator presently in office, the vacancy shall be filled by a special election in that district promulgated for 1979 in which the legislator shall have resided at the time of such death or resignation. 4. The removal by a legislator of his residency from one place to another within the district for which he was elected in 1975 shall not affect the term of office for which he was elected. Further ORDERED, ADJUDGED AND DECREED that the 52 members of the Mississippi State Senate to be chosen in the quadrennial election year of 1979 shall be elected from the districts consisting of specified counties, beats and precincts as set out, filed and entered OB 1976, pages 1578-1619. (Copies handed attys. of record and mailed Justice Dept. Copies handed Press at request of Judge Coleman at no charge)

9-8-76 DECREE: for the regular quadrennial elections of 1979 and thereafter until changed according to law the 122 members of the MISSISSIPPI HOUSE OF REPRESENTATIVES shall be elected from 122 districts as set out. We now direct the parties within 15 days to file a list of districts, if any, for the election of representatives in which special elections should be held, assigning their reasons as to each district and the Court will rule thereon as quickly as reasonably possible. This is not a final decree. The final decree, incorporating all decrees, will be entered when the Court disposes with the matter of special elections, filed and entered OB 1976, pages 1680-1714 (Copies handed attys. of record and mailed Justice Dept. Copies handed Press at request of Judge Coleman)

9-8-76 Motion of plaintiffs for Special Election Relief as to certain senatorial districts established by Court's Judgment of 8-24-76, with cert. of service, filed (Copy handed Glenda for Judge Cox and mailed Judges Russell & Coleman)

9-8-76 Defendants' submission pursuant to order, with cert. of service, filed. (Copies mailed three Judges per Giles Bryant)

9-16-76 Proposal by the United States for special elections, with attachment and cert. of service, filed. (Copies sent to the Judges at their homes per letter from Justice Dept.)

9-16-76 Pltf's. motion for special elections (House Plan), with cert. of service and attachment, filed. (Copies mailed to Three Judges per Frank Parker's Secretary)

9-20-76 Pltf's. motion to alter and amend judgment and pltfs'. objections to 1976 Court-Ordered Legislative Reapportionment Plan with cert. of service and Exhibits A thru E, filed. (Copy of letter showing copies mailed to Three Judges by Frank Parker)

9-23-76 Copy of letter from Judge Coleman to Frank R. Parker dated 09/22/76 re hearing on motion and informal conference, filed.

9-23-76 Copy of letter from Ashley Atkinson of Miss. House of Representatives to Judge Coleman dated 09/21/76 with Exhibits A thru E re Pike and Amite Counties, filed.

9-23-76 Defts'. submission pursuant to Order of 9-8-76 and objections to request for special elections, with cert. of service, filed. (Copies mailed three Judges per Giles Bryant).

9-28-76 Proposal by the United States for special elections, with attachment and cert. of service, filed. (Copies sent to the Judges at their homes, per letter from Justice Dept.)

9-29-76 Copy of letter dated 9-28-76 from William D. Neal to Hon. J. P. Coleman, re: his recommendation to the Court, which is in line with the suggestions made by Messrs. Atkinson and Walman as well as with that made by Frank R. Parker, as to House Districts 98 & 99, involving Amite and

Pike Counties, showing copies being mailed all attys. and Judges.

10-7-76 Memo from Special Master, William D. Neal, filed.

10-8-76 Pltf's. supplement to motion to alter or amend judgment, with cert. of service and Exhibit A, filed. (Copies handed Judges on 10/07/76 per Frank Parker)

10-21-76 Copy of letter from Frank R. Parker dated 10/19/76 addressed to Judges Coleman, Cox and Russell re conference of 10/07/76 with Exhibits A & B, filed.

10-22-76 Objection of the United States to plans for the redistricting of the Mississippi Senate and House of Representatives contained in the Court orders of 08/24 and Sept. 8, 1976, with Exhibits A thru F and cert. of service, filed. (Letter stated copies were mailed to Judges at their homes.)

11-12-76 ORDER: PER CURIAM: Reapportionment of House of Representatives is amended as set out. No special election will be held in newly created senatorial district. No special election will be held in Districts 52 and 81. Special elections will be held in Districts 79 and 97. Remaining District will have no special elections. Time for Special Elections will be delayed until time for appeal has expired or Supreme Court has decided an appeal on merits. Court will retain jurisdiction for setting dates for special elections. No attorney fees are allowable. Fees for Special Master will be determined after hearing and Court retains jurisdiction. Pltfs. and Department of Justice will submit proposed judgment and when duly approved and entered, same will be final judgment on reapportionment on Miss. Legislature, filed and entered OB 1976, pages 2127-2144. (Copies handed all attys. of record.) (Three Judges already had copies.)

11-18-76 FINAL JUDGMENT: Defts. are permanently restrained as set out: Reapportionment plans are ordered in effect for regular quadrennial elections of 1979 and until altered according to law; Plans shall not affect terms of legislators

elected in 1975 except as special elections are ordered in House Districts 79 and 97 on a date set by the Court; Court retains jurisdiction for purpose of setting dates for special elections; Except as set out all objections and motions by pltfs. and Dept. of Justice are denied; All costs are adjudged against defts., which will be entered against State of Mississippi when amount is computed; Pltf's. request for award of atty's fees is denied; Fees to be allowed special masters shall be taxed against State of Mississippi and amount to be determined after hearing, for which jurisdiction is retained; Except for injunctive relief, and subject of Court's retention of jurisdiction, the complaint and amended complaints are dismissed, filed and entered OB 1976, pages 2180-2200. (Copies handed Mr. Parker and mailed other attys. of record. Copy handed Glenda for Judge Cox and mailed Judges Coleman and Russell.)

11-18-76 FINAL JS 6 CARD FILED.

11-18-76 Pltf's. Notice of Appeal to U. S. Supreme Court from paragraphs 7 and 8 of the Final Judgment entered on 11/18/76, filed.

11-18-76 Cash Appeal Bond in the amount of $250.00, filed.

11-29-76 Pltfs'. motion to alter or amend judgment, with Affidavits of Frank R. Parker, Prof. Gordon G. Henderson and James W. Loewen attached as Appendix A, B, & C respectively and cert. of service, filed. (Mr. Parker stated that he is sending file stamped copies to each of the three Judges).

12-8-76 Letter from Mr. William D. Neal to Hon. J. P. Coleman dated 12-8-76, with written analysis by Special Master of pltf's. objections in his motion to alter or amend Judgment under date of 11-29-76 attached thereto, original and one copy mailed to Hon. J. P. Coleman, one copy mailed Judge Russell and one copy handed Judge Cox, by Glenda but not filed with Clerk, per instructions of Mr. Neal.

12-13-76 CERTIFIED COPY OF ORDER OF SUPREME COURT OF THE UNITED STATES: Requests to treat application as an expedited ap-

peal are granted, and probable jurisdiction is noted. Parties may file and exchange such motions under Rule 16 as they desire, and they shall file and exchange briefs on the merits on or before the close of business Monday, 2-7-77. Responsive briefs, if any, shall be filed and exchanged on or before the close of business Monday, 2-21-77. Oral argument is set for Monday, 2-28-77. Any and all other appeals from judgment be taken by filing notices of appeal and perfected pursuant to the Rules of the Court by filing statements as to jurisdiction on or before the close of business Wednesday, 1-5-77, filed and entered OB 1976, page 2397. (Copies mailed Judges Coleman & Russell and handed Glenda for Judge Cox)

12-20-76 Letter from U. S. Circuit Judge James P. Coleman dated 12/17/76 to Clerk of Court, with attached ANALYSIS BY SPECIAL MASTER of pltf's. objections in his motion to alter or amend judgment, filed. (Copies mailed all attys. of record.)

12-21-76 ORDER AMENDING PREVIOUS JUDGMENT for Legislative districts as indicated; Remaining objections filed by pltfs. are found to be without merit and will be overruled, filed and entered OB 1976, pages 2475-2479. (Copies mailed all attys. of record, and Judges Coleman and Russell. Copy handed Glenda for Judge Cox.)

12-27-76 Pltf's. Notice of Appeal to U. S. Supreme Court from Final Judgment entered on 11/18/76 as amended by the Order Amending Previous Judgment entered 12/21/76, with cert. of service, filed.

12-27-76 Pltf's. Cash Appeal Bond in the amount of $250.00 paid into Registry.

12-28-76 U.S.A., Pltf.-Intervenor's Notice of Appeal to U. S. Supreme Court the Final Judgment of the Three-Judge Dist. Court entered on 11/18/76, as amended by Order entered on 12/21/76, with cert. of service, filed.

12-30-76 Notice of Appeal of Cliff Finch, Governor, etc. to Supreme Court of United States from Paragraphs 1, 3, 5, 6 and 7 of the Final Judgment

entered on 11/17/76, and the order entered 12/21/76, amending the Final Judgment, with cert. of service, filed.

12-30-76 Bond for Costs with United States Fidelity and Guaranty Company in the amount of $250.00, filed.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

Peggy J. Connor, Anne E. Taylor, Augusta Wheadon, Ralthus Hayes, Catherine Crowell, Henry J. Kirksey, Elijah Conwell, Jr., Alma Carnegie for themselves and others similarly situated, and THE MISSISSIPPI FREEDOM DEMOCRATIC PARTY
PLAINTIFFS,

—against—

PAUL B. JOHNSON, Governor of Mississippi, JOE PATTERSON, Attorney-General of Mississippi, HEBER LADNER, the Secretary of State of Mississippi, WALTER SILLERS, the Speaker of the Mississippi House of Representatives, GEORGE YARBROUGH, the President Pro Tempore of the Mississippi Senate,
DEFENDANTS.

CIVIL NO. 3830
Filed:
Oct. 19, 1965

I. JURISDICTIONAL STATEMENT

1. This action arises under United States Code Title 42, Section 1983 and Section 1988, and under the Constitution of the United States, particularly Article IV, Section 4, the Fourteenth Article of Amendment thereto, and the Fifteenth Article of Amendment thereto. Jurisdiction is conferred on this Court by United States Code, Title 28, Section 1343, Title 28, Sections 2201 and 2202, Title 22, Sections 2281 et seq., and Title 42 Sections 1983 and 1988.

II. PARTIES

2. Plaintiffs Connor, Taylor, Wheadon, Crowell, Kirksey, Conwell, Jr., Carnegie and Hayes, are United States citizens, citizens of the State of Mississippi, Negro residents respectively of Forrest, Forrest, Lowndes, Lauderdale, Hinds, Bolivar, Holmes, and Holmes Counties, residents of

the 1st, 4th, 7th, 8th, 10th, and 22nd Senatorial Districts and residents of the 1st, 2nd, 3rd, 4th and 5th Congressional Districts. Each of them is a registered and qualified voter of the said State of Mississippi, lawfully entitled to vote in all primary, general and special elections for members of the Legislature of the State of Mississippi, and for members of the House of Representatives of the United States from their Congressional District. Plaintiffs Connor, Taylor, Crowell, Carnegie and Hayes are United States citizens, citizens of the State of Mississippi, Negro residents of Forrest, Lauderdale, and Holmes Counties, residents of the 4th, 8th, and 22nd Senatorial Districts who have, prior to December 1, 1964, been unlawfully prevented from exercising their right to vote in primary, general and/or special elections for members of the Legislature of the State of Mississippi. The Mississippi Freedom Democratic Party is a voluntary unincorporated association of residents and citizens of the State of Mississippi interested in freely exercising their right to vote and to participate fully in the political life of that State, which brings this suit on its own behalf and on behalf of its members. Plaintiffs jointly and severally bring this action on their own behalf and on the behalf of all other citizens of the State of Mississippi who are similarly situated, such persons being so numerous as to make it impractical to bring them all before this Court.

3. The defendant Johnson is sued in his capacity as Governor of the State of Mississippi and a member of the State Board of Elections Commissioners; as such he is vested with certain authority in connection with elections of members to the Mississippi Legislature.

The defendant Patterson is sued in his capacity as Attorney-General of the State of Mississippi, and a member of the State Board of Election Commissioners; as such he is vested with certain authority in connection with elections of members to the Mississippi Legislature.

The defendant Ladner is sued in her capacity as Secretary of State of Mississippi and a member of the State Board of Election Commissioners; as such she has certain authority in connection with elections of members to the Mississippi Legislature.

The defendant Sillers is sued in his capacity as Speaker of the Mississippi House of Representatives; he is the presiding officer of that body, and is here sued as a representative of all presently acting members of said House, such members constituting a class so numerous as to make it impractical to bring them all before this Court.

The defendant Yarbrough is sued in his capacity as President Pro Tempore of the Mississippi Senate, and he is the presiding officer of that body, and is here sued as the representative of all presently acting members of said Senate, such members constituting a class so numerous as to make it impractical to bring them all before this Court.

4. Common questions of law and fact are involved as to each plaintiff and each defendant named herein, and common relief is sought against each defendant named herein.

III. THE DILUTION OF THE RIGHT TO VOTE

5. The present apportionment scheme for the State Legislature and Congressional districts, from which the incumbent State Senators, State Representatives and United States Representatives were elected, establishes irrational, invidious, discriminatory and unequal districts which have in the past and presently deprive plaintiffs and all others similarly situated of rights guaranteed them by the Constitution of the United States and the State of Mississippi.

a. As to the Mississippi House of Representatives, Issaquena County has a population of 3,576 and one representative, while Forrest County has a population of 52,722 and two representatives or a representative for each 26,361. Thus the vote cast by a person in Issaquena County is worth 7.4 times as much as a vote cast by a person in Forrest County. There is likewise a gross disparity in the value of votes cast for representatives by persons in other counties in the state. (All figures are compiled from the 1960 Census Report.)

b. A majority of members of the Mississippi House of Representatives is elected by as few as 878,551 out of a population of 2,163,422 or 40.3% of the population control a majority of seats of said body.

c. Each of the 82 representative districts in the State of Mississippi should contain 17,034 persons to be apportioned on a strict population basis. At present, 53 of said 82 districts deviate from this norm by more than 15%. Of the deviations, 24 exceed the norm by more than 15% while 29 fail to meet the norm by more than 15%.

d. As to the Senate, district 44 has a population per

senator of 20,987 while district 1 has a population per senator of 187,045. Therefore, a vote cast in district 44 is worth 8.5 times as much as a vote cast in district 1. There is likewise a gross disparity in the value of votes cast for senators by persons in other counties in the state. Each vote in district 36 is worth 4.8 times as much as a vote in district 2.

e. A majority of votes in the Senate represents as few as 820,249 persons out of a total state population of 2,163,422 or 37.7% of the population of the state control a majority of votes in the State Senate.

f. Each of the 49 senatorial districts should have a population of 41,887 persons per senator to be apportioned on a strict population basis. At present 32 of the said 49 districts deviate from this norm by more than 15%. Of the deviations 8 exceed the norm by more than 15%, while 24 fail to meet the norm by more than 15%.

g. As to the Members of the United States House of Representatives, the five Congressional Districts have a population as follows:

First District:	364,962
Second District:	608,441
Third District:	460,100
Fourth District:	295,072
Fifth District:	449,565

Thus a vote cast in the 4th District is worth more than twice as much as a vote cast in the 2nd District.

h. Each of the Congressional Districts should contain 435,628 persons to be apportioned on a strict population basis. At present, 3 of the 5 districts deviate from this norm by more than 15%. Of the deviations, 1 exceeds the norm by more than 15%, while 2 fail to meet the norm by more than 15%.

IV. THE DENIAL OF THE RIGHT TO VOTE

6. Up to and including the date of the election of the present Legislature of the State of Mississippi, there has been a systematic denial of the right to vote to Negro citizens of the State of Mississippi who constitute approximately 42% of the population of the State. Said denial of the right to vote has been effectuated by the following methods:

a. The passage and/or enforcement of legislation interfering with and improperly restricting the right to vote of Negroes, both openly and through the use of devices not appearing to be directed towards disfranchising Negro citizens but in fact having that purpose and effect;

b. Violence and intimidation by public officials, including many elected to office, consisting of assault on Negroes who have attempted to register and others who accompany them to register, and physical intimidation of those suspected of desiring to vote or aiding others exercising their right to vote;

c. Action by public officials condoning private violence, including refusals to protect Negroes and prevent assaults upon them and refusals to ascertain the facts and punish the wrongdoers, when such assaults have taken place;

d. Economic retaliation against Negroes who seek to register, accomplished with the aid of public officials, consisting of taking pictures of those who attempt to register; the printing of the names and addresses of those who wish to register and the requiring of Negroes to return to the registrar's office to determine whether he has passed the test and other devices; all aimed at endangering the personal economic position of any Negro attempting to exercise his right to vote.

e. Misuse of broad discretion by local officials involved in the administration of laws having to do with the right to vote, including the application of different and more stringent standards to Negro applicants than to white, rejection of the applications of qualified Negroes, rejection of Negroes who have equal or superior qualifications than whites who were accepted;

f. Delays, obstruction, technical obstacles, and refusal of routine administrative assistance by voter registrars to Negroes, including subjecting Negro applicants for registration to procedures different from those applied to white applicants, refusals to permit Negroes to apply, unreasonable delays, denying Negroes assistance but furnishing assistance and answers to whites, falsely advising Negroes that they failed the test, and refusals by registrars to see and process Negro applicants.

g. Each of such methods has likewise been used to prevent and obstruct the right of Negroes to run for office or be nominated or be a candidate in both primary and general elections.

7. As a result of such denials no Negro was elected to or now sits as a member of the Mississippi legislature or the Congress of the United States from Mississippi.

V. CAUSES OF ACTION

8. The facts herein alleged constitute a denial to the plaintiffs of the equal protection of the laws as guaranteed to them by the Fourteenth Amendment to the United States Constitution.

9. The facts herein alleged constitute a violation of the right to vote of the plaintiffs under the Fifteenth Amendment to the United States Constitution.

10. The facts herein alleged constitute a denial to the plaintiffs of their right to a republican form of government, in violation of Article I, Section 4 of the United States Constitution.

11. The facts herein alleged constitute a violation of the Constitution and statute and common laws of the State of Mississippi regarding the conduct of elections and matters ancillary thereto.

12. Plaintiffs and all others similarly situated are suffering irreparable injury to their aforesaid rights by reason of said facts. They have no plain, adequate or complete remedy to redress these wrongs other than by this suit for declaratory judgment and injunctive relief. Any other remedy would be attended by such uncertainties and delays as to deny substantive relief, and would cause further irreparable injury, damage, expense, and inconvenience to plaintiffs and all others similarly situated.

VI. BASIS FOR THE SPECIFIC RELIEF REQUESTED

13. Plaintiffs and all others similarly situated have no adequate political remedy for the wrongs resulting from the denial to them of the right to vote because the Mississippi Legislature as presently constituted is inherently incapable of securing the constitutional rights of said plaintiffs for the reasons that:

a. Negro citizens have been and are systematically excluded from participation in the election of the present Legislature as well as of past Legislatures in violation of the Fifteenth Amendment to the Federal Constitution.

b. The Mississippi Legislature has consistently, systematically and purposefully discriminated against Negro citizens of Mississippi. Such discrimination evidences the incapacity of this Legislature to protect and enforce the constitutional rights of the plaintiffs.

14. Plaintiffs and all others similarly situated have no adequate political remedy for the wrongs resulting from the dilution of their right to vote because the Mississippi Legislature as presently constituted is inherently incapable of preparing a valid reapportionment plan consistent with the United States Constitution for the reasons that:

a. The apportionment plan under which the Legislature was elected was adopted only three (3) years ago, and yet is on its face unconstitutional;

b. The present Legislature controls the process by which the Mississippi Constitution is amended. The history of past Legislatures in general and of this Legislature in particular demonstrates that a primary purpose and effect of its acts has been to continue the dominion of those groups presently in control of it at the expense of the plaintiffs and all others similarly situated. Not only the establishment of state legislative and Congressional districts of unequal size, but also the determination of the boundaries for such districts, may and in all likelihood will be utilized by the present Mississippi Legislature for this purpose.

15. Unless this Court grants the relief prayed for herein, the result will be the continued sitting of a legislature unconstitutionally elected in a derogation of the constitutional rights of the plaintiffs and all others similarly situated. Said Legislature would continue to sit until January of 1969 and exercise direct governmental power in said State. Plaintiffs and others similarly situated have been, are and will be denied fair representation in the halls of their State Government for a period of over three (3) years duration. During this said period, legislative action and inaction will occur which will directly affect the most fundamental interests of the plaintiffs and others similarly situated. The unconstitutionally elected legislators are responsible for the educational needs of the plaintiffs and others similarly situated, as well as the health and welfare of the said plaintiffs. The Legislature is responsible for public safety, the administration of criminal justice and for the protection of the constitutional liberties of said plaintiffs. Said legislators will

have responsibility and influence over Federal programs designed to meet pressing social and economic problems of many of the State's citizens, such as the Federal anti-poverty programs, aid to education, urban renewal programs, and public housing programs. Plaintiffs and all others similarly situated have a constitutional right to representation, which right has been and is presently denied, and the restoration of which cannot be permitted to await action by the present Legislature of the State of Mississippi or the expiration of its term.

VII. PRAYERS FOR RELIEF

16. WHEREFORE, plaintiffs, on behalf of themselves and all others similarly situated, pray that this Court:

a. Assume jurisdiction in this matter and convene a statutory three-judge court pursuant to Title 22, United States Code Sections 2281 et seq. [sic]

b. Declare plaintiffs' rights to the effect that the present Mississippi Legislature was elected and is sitting in violation of the Fourteenth Amendment to the Federal Constitution, the Fifteenth Amendment to the Federal Constitution and Article IV, Section 4 thereof.

c. Declare plaintiffs' rights to the effect that the present scheme of apportionment of the Mississippi Legislature and of Congressional Districts in the State of Mississippi violates the aforesaid provisions of the United States Constitution; and that the sections of the Mississippi Constitution and statutes relating to such apportionment, or providing or permitting discrimination against any citizen of the State of Mississippi because of his race or color, now in effect or in effect for the elections conducted for the incumbent members of the Mississippi Legislature or the incumbent members of Congress from Mississippi, are unconstitutional as repugnant to the United States Constitution and therefore are null, void, frustrate and of no effect.

Further, plaintiffs, on behalf of themselves and all others similarly situated, pray this court to issue a temporary and permanent injunction to:

d. Enjoin defendants from carrying out each and any consitutional or legislative duty or right pertaining to the conduct of the legislative business of the State of Mississippi.

e. Enjoin the conduct of any primary, general or special

election for the Mississippi State Legislature until such time as this Court finds that the plaintiffs possess the rights guaranteed them by the Constitution of the United States.

f. Require the defendants to take such action as may be appropriate to remedy the denial by them of the right to vote to the plaintiffs and others similarly situated.

g. Appoint a special master to prepare a plan of apportionment for the House of Representatives and the Senate of the State of Mississippi, and the Congressional Districts of the State of Mississippi, in such manner as to take into account all factors relevant to the protection of the rights of the plaintiffs and the Negro residents and voters of the State of Mississippi.

h. Require the holding of a special election for the said House and Senate when the foregoing has been accomplished.

i. Further, the plaintiffs pray that this Court allow the plaintiffs their cost herein including reasonable attorney fees.

j. Further, plaintiffs pray that this Court retain jurisdiction to supervise and guarantee the proper performance of the foregoing, and to grant such other and further relief as to this Court seems just, equitable and proper.

Attorneys for Plaintiffs:
/s/ L. H. Rosenthal
L. H. Rosenthal
Suite 406
518 E. Capitol St.
Jackson, Mississippi

Peter Marcuse
49 Leavenworth St.
Waterbury, Connecticut

Kunstler, Kunstler & Kinoy
by: William M. Kunstler and
Arthur Kinoy
511 Fifth Avenue
New York, New York

Smith, Waltzer, Jones & Peebles
by: Benjamin Smith
Bruce C. Waltzer
1006 Baronne Building
New Orleans, Louisiana

MORTON STAVIS
744 Broad Street
Newark, New Jersey

CARL RACHLIN
38 Park Row
New York, New York

MELVIN L. WULF
A. C. L. U.
156 Fifth Avenue
New York, New York

ALVIN BRONSTEIN
603 Farish Street
Jackson, Mississippi

PLAINTIFF'S EXHIBIT 19
MAY 17, 1971

PERCENTAGE VOTES CAST IN FEBRUARY, 1968 ELECTION FOR CHARLES EVERS, CANDIDATE FOR CONGRESS IN THE PRECINCTS LOCATED IN THE COGNIZABLE RACIAL MINORITY CONCENTRATION (CRMC).

SOURCE: Voting records are taken from the Recapitulation Sheets of the Hinds County Democratic Executive Committee, certified copies being filed with the Clerk of the Court. CRMC figures are 1970 Census, Bureau of the Census. Precincts are those in effect at the time of the election.

Precinct Number	Percent of Vote for Evers in Precinct	Enumerator Districts in Precinct within CRMC	Percent Black Population in Enumerator Districts
5	82.1	56, 57, 58	99.045
7	74.4	61, 59, 60,	99.093
22	43.8	19, 20, 35	98.701
23	77.7	20, 21, 31, 33, 36, 37	79.579
24	81.1	21, 23, 26	98.080
25	72.1	29, 30, 34	95.209
26	69.2	56, 62, 70	96.944
28	61.7	69, 70	98.944
29	56.2	24, 28, 29	86.652
40	60.5	100	91.909
41	75.7	105	99.142
43	76.7	106, 107, 130, 131, 133	99.435

PERCENTAGE VOTES CAST IN AUGUST, 1967 ELECTION FOR JACOB L. REDDIX, CANDIDATE FOR REPRESENTATIVE, IN THE PRECINCTS LOCATED IN THE COGNIZABLE RACIAL MINORITY CONCENTRATION (CRMC).

SOURCE: Voting records are taken from the Recapitulation Sheets of the Hinds County Democratic Executive Committee, certified copies being filed with the Clerk of the Court. CRMC figures are 1970 Census, Bureau of the Census. Precincts are those in effect at the time of the election.

Precinct Number	Percent of Vote for Reddix in Precinct	Enumerator Districts in Precinct within CRMC	Percent Black Population in Enumerator Districts
5	76.5	56, 57, 58	99.045
7	62.6	57, 59, 60, 61	99.093
22	46.7	19, 20, 35	98.701
23	68.9	20, 21, 31, 33, 36, 37	79.579
24	65.1	21, 23, 26	98.080
25	60.3	29, 30, 34	95.209
26	57.7	56, 62, 70	96.944
28	53.3	69, 70	98.944
40	54.0	100	91.909
41	71.1	105	99.142
43	70.2	106, 107, 130, 131, 133	99.435

PERCENTAGE VOTES CAST IN AUGUST, 1967 ELECTION FOR EDDIE H. TUCKER, CANDIDATE FOR REPRESENTATIVE, IN THE PRECINCTS LOCATED IN THE COGNIZABLE RACIAL MINORITY CONCENTRATION (CRMC).

SOURCE: Voting records are taken from the Recapitulation Sheets of the Hinds County Democratic Executive Committee, certified copies being filed with the Clerk of the Court. CRMC figures are 1970 Census, Bureau of the Census. Precincts are those in effect at the time of the election.

Precinct Number	Percent of Vote for Tucker in Precinct	Enumerator Districts in Precinct within CRMC	Percent Black Population in Enumerator Districts
5	63.8	56, 57, 58	99.045
7	53.9	57, 59, 60, 61	99.093
22	36.7	19, 20, 35	98.701
23	58.4	20, 21, 31, 33, 36, 37	79.579
24	59.6	21, 23, 26	98.080
25	52.6	29, 30, 34	95.209
26	49.2	56, 62, 70	96.944
28	40.7	69, 70	98.944
29	34.2	24, 28, 29	86.652
40	39.8	100	91.909
41	59.3	105	99.142
43	57.4	106, 107, 130, 131, 133	99.435

OFFICE OF THE CIRCUIT CLERK
HINDS COUNTY

H. T. Ashford, Jr. *Clerk*
Jackson, Mississippi

STATE OF MISSISSIPPI
COUNTY HINDS

I, H. T. Ashford, Jr., Clerk of the Circuit Clerk in and for the said State and County do hereby certify that the above and foregoing is a true and correct copy of Pages 3 and 4 of the recapitulation sheets of the election held on August 8, 1967 and the complete recapitulation sheets of the election held on the 27th of February, 1968, prepared by the Hinds County Democratic Executive Committee and filed in this office.

Given under my hand and the seal of the Circuit Court at Jackson, Mississippi this the 12th day of May, 1971.

H. T. Ashford Jr. Circuit Clerk
By /s/ Sara C. Putnam D.C.

[Recapitulation Sheets Omitted]

Transcript of Proceedings

United States District Court
Southern District of Mississippi
Jackson Division
February 7, 1975

• • •

[59] BY MR. PARKER:

No, Your Honor, be glad to, in fact I intended to ask the Court to take judicial notice of the record in that Hinds County redistricting case.

BY JUDGE COLEMAN:

I will upon the request state now that this Court will take judicial notice of all the proceedings in the Kirksey case.

• • •

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

PEGGY J. CONNOR, ET AL., PLAINTIFFS,
v.
WILLIAM L. WALLER, ET AL., DEFENDANTS.

Civil Action No. 3830
Filed: April 11, 1975

JUDGMENT

It appearing to the Court that the Legislature has recently enacted Senate Bill No. 2976 and House Bill No. 1290 reapportioning the Senate and House of Representatives within the State of Mississippi and that this Court has made no final decision on the 1971 reapportionment case before it and the Court is of the opinion that such 1971 and prior reapportionments proceedings before it should now be finally dismissed without prejudice and that the parties should be required to file an amended complaint involving only the 1975 reapportionment proceedings to simplify the current matter and the issues before the Court;

As managing judge in this case and by direction of the entire Court, it is Ordered and Adjudged by the Court:

(1) That the entire proceedings before this Court involving the 1967 and the 1971 reapportionment of the Legislature are hereby dismissed without prejudice;

(2) That the plaintiffs in this case are directed to file in this cause, as Civil Action No. 3830(A), an amended complaint to attack said 1975 enactments of the Legislature of Mississippi within five (5) days after receipt of a copy of this order;

(3) That the defendants shall file their answers thereto within five (5) days after receipt of a copy of such amended complaint.

This is a matter of extreme importance at this time and time is important to both sides and this Court upon receipt of such pleadings will immediately proceed to convene and conduct a hearing on the questions presented and make a prompt and proper disposition thereof. A copy of the

pleadings of the parties shall be mailed directly to the three members of this Court at their proper addresses by the parties.

SO ORDERED this April 10th, 1975.

/s/ Harold Cox
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

Civil Action No. 3830(A) (Three-Judge Court)

Filed April 15, 1975

AMENDED COMPLAINT FOR INJUNCTIVE AND
OTHER EQUITABLE RELIEF

[Caption Omitted]

A. Jurisdiction

1. Plaintiffs file this Amended Complaint for Injunctive and Other Equitable Relief pursuant to this Court's Order of April 11, 1975. The successors in office of the original defendants are substituted for their predecessors in office pursuant to Rule 25(d), Federal Rules of Civil Procedure, and are sued individually and in their official capacities.

2. Plaintiffs seek injunctive relief against the enforcement, implementation and/or administration of House Bill 1290, Laws of Mississippi, 1975 Regular Session, and Senate Bill 2976, Laws of Mississippi, 1975 Regular Session as violative of plaintiffs' rights secured by Section 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c, the Fourteenth and Fifteenth Amendments to the United States Constitution, and 42 U.S.C. §§ 1971, 1973, and 1983. Plaintiffs further seek approval by this Court of a statewide, single-member legislative redistricting plan for both houses of the Mississippi Legislature as a remedy for the violations of plaintiffs' rights.

3. This Court has jurisdiction of this action and this Amended Complaint pursuant to 28 U.S.C. §§ 1331 and 1343 and 42 U.S.C. §§ 1971(d) and 1973j(f). A three-judge District Court is required pursuant to 28 U.S.C. § 2281 and 42 U.S.C. § 1973c.

B. Count One: Section 5 of the Voting Rights Act of 1965

4. The State of Mississippi and all of its political subdivisions are covered by and included within the prohibi-

tions and provisions of Section 4(a) of the Voting Rights Act of 1965, 42 U.S.C. § 1973b(a).

5. H.B. 1290 and S.B. 2976. Miss. Laws, 1975 Reg. Sess., were enacted by the 1975 Regular Session of the Mississippi Legislature, and signed by Governor William L. Waller. Together they constitute a legislative redistricting plan for the Mississippi House of Representatives and Mississippi Senate which substantially altered and changed the prior districts as established by the Mississippi Legislature in 1971, Mississippi Code Annotated §§ 5-1-1 and 5-1-3 (1972).

6. H.B. 1290 and S.B. 2976, Miss. Laws, 1975 Reg. Sess., constitute a standard, practice, and procedure with respect to voting different from that in force or effect on November 1, 1964, within the meaning of Section 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c, as amended.

7. Neither the State of Mississippi, or any of the defendants or their attorneys, nor the chief legal officer of the State of Mississippi have submitted H.B. 1290 or S.B. 2976, Miss. Laws, 1975 Reg. Sess., to the United States Attorney General for review and clearance under Section 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c, nor has the State of Mississippi, nor any of the defendants or their attorneys, nor the chief legal officer of the State of Mississippi instituted an action in the United States District Court for the District of Columbia pursuant to Section 5 of the Voting Rights Act for a declaratory judgment that such statutes do not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color.

8. The State of Mississippi and the defendants have enacted and approved H.B. 1290 and S.B. 2976, Miss. Laws, 1975 Reg. Sess., and presently seek to administer such statutes without obtaining the review and clearance required by Section 5 of the Voting Rights Act of 1965, in violation of the rights of plaintiffs secured by Section 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c.

C. Count Two: Malapportionment

9. H.B. 1290 and S.B. 2976 as they provide state legislative districts are identical to the legislative redistricting plan ordered by this Court in its judgment of May 18, 1971, as supplemented by this Court's order of May 21, 1971, except for Districts 31, 45, and 46 of H.B. 1290.

10. H.B. 1290 and S.B. 2976, Miss. Laws, 1975 Reg. Sess., establishing state legislative districts for the elections of members of the Mississippi House of Representatives and Mississippi Senate establish irrational, invidiously discriminatory, and unequal districts which have in the past and presently deprive plaintiffs and all others similarly situated of rights guaranteed them by the Fourteenth Amendment to the United States Constitution.

11. According to the 1970 U.S. Decennial Census of population taken by the U.S. Bureau of the Census, Mississippi had a total population of 2,216,912. Accordingly, the norm, or ideal population size, for a legislative district for election of members to the Mississippi House of Representatives is 18,171 persons, and the norm, or ideal population size, for a legislative district for election of members to the Mississippi Senate, is 42,633 persons.

12. The Mississippi House and Senate districts as determined by H.B. 1290 and S.B. 2976, Miss. Laws, 1975 Reg. Sess., are grossly malapportioned, and fail to provide for substantial equality of population among the legislative districts.

13. Under H.B. 1290, Miss. Laws, 1975 Reg. Sess., 122 members of the Mississippi House of Representatives are apportioned among 46 House districts. Exclusive of floterial districts, which are covered in the next paragraph, H.B. 1290 creates districts for the Mississippi House of Representatives which are underrepresented by as much as 9.906% from the norm of population equality (District 3, DeSoto and Marshall Counties, total population of 59,912, 3 representatives) and which are overrepresented by as much as 9.823% from the norm of population equality (District 18, Grenada and Montgomery Counties, total population of 32,772, 2 representatives), for a total span of 19.729 percentage points of variance from population equality. Of the 46 House districts created, 23 (half), electing 63 of the 122 representatives (more than half), vary from the norm of population equality in excess of 5% plus or minus. The ratio of the largest to the smallest district is 1.219 to 1.

14. H.B. 1290, Miss. Laws, 1975 Reg. Sess., provides for nine floterial districts, which are special multi-member districts, in which one or more representatives are elected from the district at large and one or more representatives are elected from subdistricts within the whole district consisting of one or more counties or supervisors' districts within the district. Use of these floterial districts further dilutes the weight of the votes in each district and subdistrict. H.B. 1290 creates floterial districts which vary from the norm of population equality by maximum variances of +38.694% (District 4, Monroe County, 1 representative) to −24.269% (District 25, Newton County, 1 representative) for a total span of 62.963 percentage points of variance.

15. Under S.B. 2976, Miss. Laws, 1975 Reg. Sess., 52 members of the Mississippi Senate are apportioned among 33 Senate districts. Exclusive of floterial districts, which are covered in the next paragraph, S.B. 2976 creates districts for the Mississippi Senate which are underrepresented by as much as 9.584% from the norm of population equality (District 29, George, Greene, Perry, and Wayne Counties, total population of 46,719, 1 senator), and which are overrepresented by as much as 9.319% from the norm of population equality (District 19, Kemper and Lauderdale Counties, total population of 77,320, 2 senators), for a total span of 18.903 percentage points of variance from population equality. Of the 33 Senate districts, 18 (more than half), electing 26 of the 52 senators (half), vary from the norm of population equality in excess of 5% plus or minus. The ratio of the largest to the smallest district is 1.208 to 1.

16. S.B. 2976 provides for one floterial district (District 27). In this floterial district the two subdistricts, (1) Covington, Jefferson Davis, Lawrence, and Marion Counties, and (2) Jones County, are over-represented by variances of −5.923% and −10.708 percent respectively, for a total span of 20.292 percentage points of variance.

17. The Mississippi Legislature, and the defendants, have failed to make an honest and good faith effort to construct districts, in both the Mississippi House of Representatives and the Mississippi Senate, as nearly of equal population as is practicable.

18. H.B. 1290 and S.B. 2976, Miss. Laws, 1975 Reg. Sess., fail to produce the minimum deviation from the ideal of population equality, both above and below the norm, keeping intact political boundaries.

19. In its 1973 Regular Session the Mississippi Legislature considered and rejected a state legislative reapportionment plan which provided considerably more equality of population among the state legislative districts than is pro-

vided by H.B. 1290 and S.B. 2976, Miss. Laws, 1975 Reg. Sess. On January 3, 1973, the Interim Study Committee on Legislative Reapportionment submitted proposals for redistricting of the Mississippi House and Mississippi Senate which would have provided greater equality of population among the districts and would have minimized variances for the House districts to +6.8% and −7.9%, for a total span of only 14.7 percentage points of variance, and minimized variances for the Senate districts to +6.0% and −6.8%, for a total span of only 12.8 percentage points of variance. No districts for either the House or Senate would have had variances over 8% plus or minus. All county boundaries were maintained intact. The recommendations of the Interim Study Committee on Legislative Reapportionment were introduced in the Mississippi House as House Bill 446 and in the Mississippi Senate as Senate Bill 1701, 1973 Reg. Sess., but were not passed in the form in which they were introduced.

20. (a) In its 1975 Regular Session, the Mississippi Legislature considered but rejected state legislative redistricting plans prepared by Dr. David Valinsky, Chairman and Professor of the Department of Statistics, Bernard M. Baruch College, City University of New York, which would have provided much greater equality of population among the districts. (b) The Valinsky plan provided single-member districts, statewide for both the Mississippi House of Representatives and the Mississippi Senate. (c) The Valinsky House plan provided a maximum plus variance of 3.09% and a maximum minus variance of 2.30%, for a total deviation of 5.39%. (d) The Valinsky Senate plan provided a maximum plus variance of 1.66% and a maximum minus variance of 1.73%, for a total deviation of 3.39%. (e) The Valinsky plan for the House was proposed as Floor Amendment No. 5 to H.B. 1290 by Rep. Robert Donald, but was defeated by a vote of 4 to 106. (f) The Valinsky plan for the Senate was considered by the Senate Committee on Elections but rejected without a floor vote.

21. H.B. 1290 and S.B. 2976, Miss. Laws, 1975 Reg. Sess., fail to provide for the maximum possible substantial equality of population among the House and Senate legislative districts, unconstitutionally dilute and debase the voting strength of plaintiffs and members of the plaintiff class, consisting of all registered voters of the State of Mississippi, and unconstitutionally and irrationally enhance or

debase voting strength depending upon the happenstance of the voter's area of residence, all in violation of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

22. The failure of H.B. 1290 and S.B. 2976 to provide districts which are substantially equal in population and which conform to constitutional requirements derives in part from the statutes' exclusive reliance on county lines as boundaries for legislative districts, although these statutes fail even to achieve the maximum population equality which could be obtained relying exclusively on county boundary lines. The exclusive use of county lines as boundaries for legislative districts is irrational, arbitrary, and discriminatory.

D. Count Three: Racial Discrimination

23. (a) Of the 46 districts for election of members of the Mississippi House of Representatives provided by H.B. 1290, Miss. Laws, 1975 Reg. Sess., 33 districts are multi-member districts within which representatives are elected at large from the entire district, and of these 9 are floterial districts in which representatives are elected from subdistricts. Of the 33 districts for election of members of the Mississippi Senate provided by S.B. 2976, Miss. Laws, 1975 Reg. Sess., 14 districts are multi-member districts within which senators are elected at large from the entire district, and of these 1 is a floterial district in which senators are elected from subdistricts.

(b) Under H.B. 1290, 109 of the 122 members of the Mississippi House of Representatives, or 89% of the entire membership of the House, are elected from multi-member or floterial districts in which two or more members are elected from a single district.

(c) Under S.B. 2976, 33 of the 52 members of the Mississippi Senate, or 63% of the entire membership of the Senate, are elected from multi-member or floterial districts in which two or more members are elected from a single district.

24. (a) H.B. 1290 and S.B. 2976 are identical to the legislative districts in effect for the 1971 state legislative elections, except for Districts 31, 45, and 46 of H.B. 1290.

(b) Of the 29 Black candidates who ran for the Legislature in 1971, 28 were defeated.

(c) Of the 28 Black legislative candidates who were defeated in 1971, 24 were required to run in multi-member districts.

25. The multi-member districts provided by H.B. 1290 and S.B. 2976, Miss. Laws, 1975 Reg. Sess., are invidiously discriminatory and operate with the purpose and/or effect of minimizing and cancelling out the voting strength of substantial numbers of blacks in the Mississippi voting population.

26. According to the 1970 U.S. Census of Population, Bureau of the Census, the population of the State of Mississippi contains 1,393,203 white persons, or 62.85% white, 815,770 black persons, or 36.80% black, and 7,859 other minority persons, or 0.35% other minorities. Mississippi has a greater percentage of black persons in its population than any other state in the United States.

27. (a) From 1890 to the present time, only one black person, Rep. Robert Clark of Ebeneezer, has been elected to the Mississippi House of Representatives, and no black persons have been elected to the Mississippi Senate.

(b) From 1890 to the present time, no Black candidates for the Mississippi Legislature have been nominated for legislative office in any party primary.

28. In Mississippi the political processes leading to nomination and election to the Mississippi Legislature and other elective positions have discriminated against black persons and have had the purpose and/or effect of denying to black persons in Mississippi the opportunities enjoyed by white persons to participate in the political processes and to elect legislators of their choice, including, but not limited to:

(a) At least until 1952, the Rules of the Mississippi Democratic Party excluded blacks from participation in the Democratic primaries of the State.

(b) At least until 1964, the platforms of the Mississippi Democratic and Republican parties adopted at their respective state conventions contained provisions espousing segregation of the races as a principle of those respective parties. Mississippi law (Miss. Code § 3129 (1956 Recomp.)) barred from participation in state primaries any person who was not "in accord with the statement of the principles of the party holding such primary, which principles shall have been declared by the state convention of the party holding such primary," thus banning all advocates of racial integration and practically all Mississippi black people from participating in party primaries.

(c) At least until 1964, and in many places for many years thereafter, public schools in the state of Mississippi were segregated on the basis of race, and dual, bi-racial school systems were maintained throughout the state.

(d) Prior to the passage of the Voting Rights Act of 1965, qualified black voters in Mississippi were almost completely disfranchised, and prevented from registering to vote, by the racially discriminatory voter registration tests and procedures established by the Mississippi Legislature which were suspended by the terms of the Voting Rights Act of 1965. As of 1964, only an estimated 6.7% of the voting age black persons in Mississippi had been permitted to register to vote.

(e) Black candidates for positions in the Mississippi Legislature have been disqualified from running, and their names have been kept off the ballot, through the application of racially discriminatory and unconstitutional qualifying requirements.

(f) Black people in Mississippi have long suffered from, and continue to suffer from, the results and effects of invidious discrimination and treatment in the fields of education, employment, economics, health, politics, and others. Black people in Mississippi suffer from disproportionately lower income, disproportionately lower educational attainment, disproportionately higher rates of unemployment, and economic dependence upon often hostile whites, all of which constitute difficult, often insurmountable barriers to their free and equal participation in the political processes.

(g) As a result of the above-stated discrimination, voter registration among blacks in Mississippi is disproportionately lower than white registration.

29. The Mississippi Constitutional Convention of 1890 in its reapportionment plan for the Mississippi Legislature diluted Black voting strength and gerrymandered state legislative districts by:

(a) Increasing the number of representatives in the State Legislature by 13 and alloting the increase to the white majority counties;

(b) Creating subdistricts in at least four majority Black counties, and carving out majority white single-member districts to increase white representation in the Mississippi

Legislature and reduce the representation of Black constituencies;

(c) Otherwise, keeping county lines intact in state legislative districts, and dividing the state into three constitutional apportionment districts, and permanently assigning each apportionment district one-third of the members of the House of Representatives, thus limiting the representation from the majority Black counties concentrated in the Delta and River Counties.

30. The Mississippi election statutes are designed to and have the purpose and effect of depriving black candidates for legislative office in at-large, or multi-member districts, of the opportunity to be elected and enhance the opportunity for racial discrimination:

(a) Miss. Code Ann. § 23-3-69 (1972) requires that candidates receive a majority of the votes cast to secure nomination in the Democratic primary, which in most parts of Mississippi is tantamount to election.

(b) Miss. Code Ann. § 3110 (1956 Recomp.) requires that in primaries for selection of nominees for legislative office, voters must vote for the full number of candidates to be nominated, and single-shot voting is prohibited and single-shot votes are rejected.

(c) Under H.B. 1290 and S.B. 2976, candidates for legislative office must run by posts limiting candidates for legislative office from a multi-member district to a specific "post" on the ballot.

31. Since 1965, the Mississippi Legislature has not been adequately responsive to the interests of the black population in Mississippi, has passed legislation which is racially discriminatory in purpose and/or effect, including unconstitutional aid to racially segregated private schools and unconstitutional and unlawful election laws designed to prevent black candidates for party or public office from gaining a place on the ballot or being elected, and has failed to consider or enact bills which have been introduced which were designed to serve the best interests of the black population of the state.

32. The multi-member state legislative districts established by H.B. 1290 and S.B. 2976, Miss. Laws, 1975 Reg. Sess., are invidiously discriminatory and have the purpose and/or effect of minimizing and cancelling out the voting strength of black voters in Mississippi:

(a) According to the 1970 U.S. Census of Population, 25 of Mississippi's 82 counties are majority black in population. Under H.B. 1290 (Mississippi House), 24 of these 25 majority black counties are included within multi-member and multi-county districts, whereas disproportionately fewer majority white counties are included within multi-member and multi-county districts. Under S.B. 2976 (Mississippi Senate), 17 of these 25 majority black counties are included within multi-member and multi-county districts, whereas disproportionately fewer majority white counties are included within multi-member and multi-county districts.

(b) Under H.B. 1290 and S.B. 2976, substantial concentrations of black population sufficiently populous and compact to form single-member districts for the Mississippi House and Senate are combined with larger concentrations of white population to create multi-member and multi-county districts with over-all white majorities, thus diluting, submerging, and cancelling out black voting strength. Thus, in H.B. 1290, seven black majority counties whose populations exceed or come close to the norm—Marshall, Panola, Noxubee, Kemper, Madison, Claiborne, and Jefferson Davis, and in S.B. 2976, eight black majority counties whose populations exceed or come close to the norm—Marshall, Panola, Carroll, Noxubee, Kemper, Claiborne, Copiah, and Jefferson Davis—are combined with white majority counties to create over-all white majority districts, thus effectively cancelling out black voting strength in those counties.

(c) In large, majority white counties, with sufficient and compact Black population large enough to form majority Black single members districts, such as Lowndes (16,236 Black persons), Warren (18,355 Black persons), Lauderdale (20,630 Black persons), and Adams (17,865 Black persons), two or more representatives in H.B. 1290 are elected in at-large voting, thus submerging substantial Black population concentrations sufficiently large to constitute majority Black single-member districts in county-wide and district-wide white population and voting majorities, thus diluting and cancelling out Black voting strength.

(d) Many of the multi-member and multi-county districts created by H.B. 1290 and S.B. 2976 are exceedingly large, casting a special and often insurmountable burden on black candidates, whose financial resources are disproportion-

ately more limited than those of white candidates, of financing successful campaigns in those districts.

33. (a) H.B. 1290 provides with regard to House District 31 that two Representatives shall be residents of and elected by each of the five supervisors' districts of Hinds County, and two shall be elected by the county at large.

(b) Since Black persons constitute only 39% of the population and only 34% of the voting age population of Hinds County (1970 Census), and since racial bloc voting generally prevails in Hinds County, the at-large feature dilutes and cancels out Black voting strength in Hinds County and prevents the substantial Black population (84,064 Black persons) (1970 Census) from electing Representatives of their choice.

(c) The five supervisors' districts of Hinds County as approved by the Board of Supervisors of Hinds County in 1973 constitute a racial gerrymander and dilute and fragment Black voting strength. Each of the five proposed supervisors' districts contains a white voting age and registered majority. If the United States District Court in *Kirksey* v. *Board of Supervisors of Hinds County,* Civil Action No. 4939(N), approves the Board's proposed plan, Black voters in Hinds County will be deprived of the opportunity to elect Representatives of their choice in any of the five districts.

(d) H.B. 1290 provides that the 10 Representatives for Hinds County elected by supervisors' districts shall be elected in the 1975 legislative elections from the five supervisors' districts approved by the decision of the United States District Court in the *Kirksey* case "regardless of any modifications to said districts brought about by appellate review." This provision denies plaintiffs their rights to due process and equal protection of the laws secured by the Fourteenth Amendment to the U.S. Constitution and their rights secured by 28 U.S.C. § 2106.

34. S.B. 2976 provides with regard to Senate District 22 that all five Senators shall be elected by county-wide, at-large voting. Since Black persons constitute only 39% of the population and only 34% of the voting age population of Hinds County (1970 Census), and since racial bloc voting generally prevails in Hinds County, county-wide, at-large voting for Senators dilutes and cancels out Black voting strength in Hinds County and prevents the substantial

Black population (84,064 Black persons) (1970 Census) from electing Senators of their choice.

35. As a result of substantial out-migration of adult Blacks from Mississippi since 1970, and the mortality rate among Blacks, and given that in most counties in Mississippi disproportionately fewer Blacks are of voting age or registered to vote than whites, under H.B. 1290 and S.B. 2976, it is extremely unlikely that in 1975 Black candidates for the Mississippi Legislature can win election in any legislative district in the state under H.B. 1290 and S.B. 2976, except in District 16 of H.B. 1290 currently occupied by the state's only Black legislator, Rep. Robert Clark.

36. The multi-member and floterial districts established by H.B. 1290 and S.B. 2976, Miss. Laws, 1975 Reg. Sess., are racially discriminatory, submerge black voting strength, operate to perpetuate this immediate prior history of discrimination in voting, and invidiously exclude black persons in Mississippi from free, equal, and effective participation in the election of members to the Mississippi House of Representatives and Mississippi Senate, all in violation of the rights of plaintiffs and persons similarly situated secured by the Fourteenth and Fifteenth Amendments to the United States Constitution, and by 42 U.S.C. §§ 1971, 1973, and 1983.

F. Failure to Protect Plaintiffs' Rights.

37. The Mississippi Legislature has not to date adequately protected plaintiffs' rights to be free from racial discrimination and dilution of voting strength inherent in the legislative districts established by H.B. 1290 and S.B. 2976, Miss. Laws, 1975 Reg. Sess.

38. During the 1973 Regular Session of the Mississippi Legislature, attorneys for the plaintiffs and attorneys for the defendants, including the defendant Attorney General A. F. Summer, met as directed by the Court with members of the Mississippi Legislature. Attorneys for the plaintiffs urged members of the Mississippi Legislature that multi-member districts were racially discriminatory, urged them to enact single-member districts, at least for Hinds, Harrison, and Jackson Counties, and demonstrated how this could be done. In the 1973 Regular Session the Mississippi Legislature passed two bills which partially provided single-member districts in Hinds, Harrison, and Jackson Counties,

House Bill 446 and Senate Bill 1701, although those bills also provided for at-large legislative districts in those counties. However, later in the session, after the deadline for the introduction of new bills had passed, this legislation was superceded by Chs. 456 and 457, Miss. Laws, 1973 Reg. Sess., which failed to provide any single-member districts in those counties.

39. In its opinion of May 18, 1971, this Court held:

> "When, however, a county, within its own borders, elects four or more representatives, it would be ideal if it could be divided into districts, for the election of one member to the district. * * * This Court now states, therefore, that as of January 1, 1972, it expects to appoint a special master to take testimony and make findings as to whether the Counties of Hinds, Harrison, and Jackson may feasibly be divided into districts of substantially equal numbers in population for the elections of 1975 and 1979 and to file his recommendations with this Court for appropriate adjudication. As to this, jurisdiction is retained." 330 F. Supp. 506, 519.

No special master was appointed according to the terms of this Court's opinion. On January 3, 1973, plaintiffs filed with this Court a motion for appointment of a special master to implement this holding of the Court. By order of January 4, 1973, that motion was deferred pending action by the Mississippi Legislature, which after three sessions has failed to grant plaintiffs relief. To date no hearing has been scheduled on that motion.

40. On January 24, 1972, the United States Supreme Court vacated this Court's judgment of May 18, 1971, except insofar as it applied to the 1971 elections, and remanded this case back to this Court for further proceedings consistent with the Supreme Court's opinion. The Supreme Court noted that this Court retained jurisdiction regarding single-member districts in Hinds, Harrison, and Jackson Counties, and noted that this Court ordered the appointment of a special master after January 1, 1972 to determine the feasibility of single-member districts for these counties. The Supreme Court further ordered:

> "Such proceedings should go forward to be promptly concluded, for, as this Court has emphasized, 'when District Courts are forced to fashion apportionment plans, single-member districts are preferable to large multi-member districts as a general matter.' Connor v. Williams, 402 U.S. 690, 692 (1971)."

The mandate of the Supreme Court regarding the appointment of a special master has not yet been implemented.

41. (a) In its 1975 Regular Session, the Mississippi Legislature considered but rejected three floor amendments to H.B. 1290 which would have provided single-member districts for the Mississippi House of Representatives.

(b) Floor Amendment No. 1, sponsored by Rep. Charles Mitchell and six other members of the Hinds County delegation in the Mississippi House of Representatives, would have created 12 single-member districts for Hinds County. On the vote on the amendment, eight members of the Hinds County House delegation voted for the amendment, but the amendment lost by a vote of 22 to 84. A copy of proposed Amendment No. 1 to H.B. 1290 in the House is attached as Exhibit 1.

(c) Floor Amendment No. 2, sponsored by Rep. Robert Clark, would have directed the House Committee on Apportionment and Elections and the Senate Committee on Elections to create single-member districts for the House and Senate. This amendment lost by a voice vote. A copy of proposed Amendment No. 2 to H.B. 1290 in the House is attached as Exhibit 2.

(d) Floor Amendment No. 5, sponsored by Rep. Robert Donald, would have created 122 single-member districts statewide for the Mississippi House of Representatives, and was identical to the Valinsky plan for the House admitted in evidence at the hearing in this cause on February 7, 1975. This amendment lost by a vote of 4 to 106. A copy of proposed Amendment No. 5 to H.B. 1290 in the House is attached as Exhibit 3.

42. All available 1970 Census data now has been published, and with this Census data it is now possible to create single-member legislative districts with substantial equality of population among the districts, both statewide and for Hinds, Harrison, and Jackson Counties.

43. Plaintiffs have filed with the Court two plans providing for single-member districts statewide for both the Mississippi House of Representatives and the Mississippi Senate with substantial equality of population among the districts:

(a) The plan drawn by Dr. David Valinsky was admitted in evidence at this Court's hearing on February 7, 1975, as Exhibits P-15 (Mississippi House) and P-16 (Mississippi Senate). Under the Valinsky plan no district has a variance from the norm greater than 3.09%. The House districts range from +3.09% to −2.30%, for a total deviation of only 5.39%. The Senate districts range from +1.66% to −1.73%, for a total deviation of only 3.39%.

(b) The plan drawn by Mr. Henry J. Kirksey has been filed with the Court as an exhibit to the Deposition of Mr. Kirksey taken March 17, 1975, and is attached herein as Exhibits 4 and 5. Under the Kirksey plan, no district has a variance from the norm greater than 2.96%. The House districts range from +2.96% (House District 7) to −2.79%, for a total deviation of only 5.75%. The Senate districts range from +2.39% to −2.62%, for a total deviation of only 5.01%.

(c) In addition several additional plans have been presented to the Court for single-member districts substantially equal in population for Hinds County only. These include the Sweeney plans, attached as exhibits to Exhibit P-3, hearing of February 7, 1975, and a Hinds County Senate plan based exclusively on 1970 Census Tracts, Exhibit P-11, hearing of February 7, 1975.

44. Plaintiffs are suffering immediate and irreparable injury by virtue of the foregoing conduct of defendants, and unless relief is granted will continue to suffer violations of their rights as secured by the Constitution and laws of the United States. Plaintiffs have no adequate remedy at law to redress the deprivations of their rights, and have exhausted their administrative and legislative remedies. Unless this Court grants the requested relief, plaintiffs will continue to suffer irreparable injury.

G. Relief.

45. WHEREFORE, plaintiffs pray that this Court set this matter for an expeditious final hearing on the merits without further delay, and upon such hearing:

(1) Order preliminary and permanent injunctions restraining and enjoining defendants, their officers, agents, servants, employees, attorneys, successors in office, and all persons in active concert and participation with them from putting into effect, administering, executing, enforcing, or

otherwise requiring compliance with H.B. 1290 and S.B. 2976, Miss. Laws, 1975 Reg. Sess., as violative of the rights of plaintiffs and all persons similarly situated as secured by the Fourteenth and Fifteenth Amendments to the United States Constitution and 42 U.S.C. §§ 1971, 1973, 1973c, and 1983;

(2) Order the defendants to adopt and implement and put into effect prior to the 1975 state legislative primary and general elections statewide, single-member legislative redistricting plans for the Mississippi House of Representatives and the Mississippi Senate;

(3) Enter orders extending the qualifying deadlines for legislative candidates, staying the 1975 legislative primary and general elections, and other such orders as may be necessary to secure the rights of plaintiffs and those similarly situated to statewide, single-member legislative districts for the 1975 legislative primary and general elections;

(4) Grant plaintiffs their taxable costs of this action, necessary expenses of the litigation, and reasonable attorneys' fees; and

(5) Grant plaintiffs such other relief as may be just and equitable.

/s/ Frank R. Parker
FRANK R. PARKER
HERMAN WILSON
Lawyers' Committee for Civil Rights Under Law
233 North Farish Street
Jackson, Mississippi 39201

JOHN L. MAXEY, II
507 East Pearl Street
Jackson, Mississippi 39201
Attorney for Plaintiff

[Exhibits Omitted]

United States District Court
Southern District of Mississippi
Jackson Division
May 7, 1975

• • •

[45] BY MR. PARKER:

We move the admission in evidence, Your Honor, of House Concurrent Resolution Number 55 in the 1973 regular session of the Mississippi Legislature. The Legislature in Mississippi——

BY JUDGE COLEMAN:

Now just one moment. We are going to take judicial notice of all acts of the Mississippi Legislature, all bills introduced in the legislature, and all you've got to do when the time comes to argue your case or to file a brief is just elude to it and direct our attention to it.

• • •

[47] BY MR. PARKER:

Exhibit 26 attached was a true and correct copy of the master computer printout of the 1970 U. S. census showing the population data through each census enumeration district in Mississippi as determined by the U. S. Bureau of the Census.

BY JUDGE COLEMAN:

[48] We will allow you in our consideration of this case to refer to any part of the United States Census of 1970 without the necessity of introducing it in evidence.

• • •

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

PEGGY J. CONNER, ET AL.,
PLAINTIFFS,
vs.
PAUL B. JOHNSON, ET AL.,
DEFENDANTS.
} Civil Action No. 3830

DEPOSITION OF HAROLD E. SWEENEY, JR.

[2] Taken by Plaintiff
11:30 A.M., Friday, April 20, 1973
Room 408, Federal Building
Jackson, Mississippi

APPEARANCES:

PRESENT AND REPRESENTING
THE PLAINTIFFS:

Hon. Frank R. Parker, and
Hon. Herman Wilson
Lawyers' Committee for Civil
Rights Under Law
233 North Farish Street,
Jackson, Mississippi 39201
and
Hon. John L. Maxey, III
Post Office Box 22571
107 South Farish Street,
Jackson, Mississippi

PRESENT AND REPRESENTING
THE DEFENDANTS:

Hon. William A. Allain,
First Assistant Attorney General,
and
Hon. Heber A. Ladner, Jr.

Special Assistant Attorney General
Post Office Box 220
Jackson, Mississippi 39205

COURT REPORTER AND NOTARY PUBLIC:

Mrs. Glenda Ferguson
360 Swan Lake Drive
Jackson, Mississippi 39212

[3] BY MR. LADNER: [Statements made at the start of taking of the depositions.]

We object to the taking of the deposition since the order provided that the plaintiffs must show cause by 9:00 A.M. in Courtroom Two of this building why the plan could not be adopted. It is now 9:15. Second, the deposition appears to be within the scope of the protective order issued by the managing Judge, which prohibited the taking of depositions of staff persons of either the plaintiffs or the defendants in this cause.

Second, there appears to be protection against the taking of this deposition in that the depositions to be taken were specified by the managing Judge by name of the deponent. I was referring to the statements Judge Cox made in open court. The order itself does not name particular persons, but I think we are bound by the oral as well as the written directions of the managing Judge.

BY MR. PARKER:

Do you stipulate to waiving notice of the deposition?

BY MR. LADNER:

Yes.

BY MR. PARKER:

I'll just respond briefly. We are here on the order for plaintiffs to show cause filed March 13, 1973 which states: "Accordingly, the plaintiffs and their attorneys of record are [4] hereby cited to show cause before this Court at 9:00 A.M., April 20, 1973, Court Room No. 2 of Jackson, Mississippi, if any they can, why said legislative enactments as passed and adopted should not be approved under the rule announced by the Supreme Court in Mahon v. Howell. . . ."

We have, in response to that order, flown Dr. David

Valinsky in from New York to testify at this show cause hearing. We have flown Mr. Harold E. Sweeney, Jr., in from Carlisle, Pennsylvania to testify at this show cause hearing this morning. Courtroom No. 2 was locked and no judges were there, and counsel for defendants have consented to taking the depositions of these witnesses in lieu of courtroom testimony which was scheduled for this morning.

HAROLD E. SWEENEY, JR.

after being duly sworn, was examined and testified on his oath as follows, to-wit:

DIRECT EXAMINATION BY MR. PARKER:

Q. Would you state your name for the record, please?
A. Harold E. Sweeney, Jr.
Q. What is your address?
A. 555 South Hanover Street, Carlisle, Pennsylvania 17013.
Q. What is your business address?
A. Department of Social Science, Shippensburg State College, [5] Shippensburg, Pennsylvania.
Q. What is your occupation?
A. I am a political scientist and college teacher.
Q. What is your age?
A. Thirty-nine.
Q. What is your current position?
A. Assistant Professor of Political Science.
Q. Where?
A. At Shippensburg State College.
Q. Would you describe your educational background, please?
A. I'm a graduate of Cornell University and the University of Michigan, and I taught as a faculty member at the University of Michigan, the University of Massachusetts at Amherst, at Jackson State College, and I'm currently at Shippensburg State College.
Q. What degrees do you have?
A. A.B. and A.M. and I am completing a doctoral dissertation at the present time.
Q. What is your Master's Degree in?
A. Political Science.

Q. Have you ever been to Mississippi before?

A. Yes.

Q. Describe how long you were in Mississippi and what you did.

[6] A. I lived in Mississippi for approximately three years. I had made brief visits before that. I was on the faculty of Political Science at Jackson State College.

Q. For how long?

A. For one year and subsequently worked on a consultant basis for the Lawyers' Committee for Civil Rights Under Law.

Q. What was your position at Jackson State College?

A. Assistant Professor of Political Science.

Q. Was that on any particular fellowship or grant?

A. I was a Woodrow Wilson Foundation teaching intern.

Q. What training or background do you have in state legislative reapportionment and re-districting and reapportionment generally?

A. One of my areas of interest is state and local politics, and I have a specialized interest in legislative apportionment as well as Congressional apportionment. My experience in this area has involved the analysis of legislative reapportionment plans in the State of Mississippi, preparation of legislative apportionment plans. I have also been generally concerned with matters of districting at the county level in Mississippi, and at the Congressional level in the State of Michigan, and did prepare some years ago a Congressional districting [7] proposal in the State of Michigan.

Q. Have you prepared analyses of deviations from population equality for re-districting and reapportionment lawsuits in Mississippi?

A. I have.

Q. Would you testify with regard to the particular counties in which you have analyzed county supervisor's districts for deviations from population equality?

A. I worked on this matter in connection with Adams County. The case there is Howard, I believe, versus the Adams County Board of Supervisors. Also in Issaquena County, Hall versus Issaquena County Board of Supervisors. Was your question limited to the county level?

Q. Are those the only ones on a county level?

A. Yes.

Q. How about on the state level?

A. On the state level I analyzed plans which were prepared by the Legislature during the 1971 Session—the various bills that were up, and the final plan that was invalidated by the three-judge District Court in 1971. I prepared analyses of the plan which the Court adopted—the Court plan, and I have examined the 1973 Legislative plan.

Q. Specifically with regard to your analysis of the deviation [8] from population equality in Adams County, were your calculations and statistics accepted by the Court in that case?

A. I don't know if I can answer that. As I recall I testified on that matter, and the upshot of the case was that the districts were found to be violative of the equi-populous district rule. I can't say how the judge arrived at his decision.

Q. What was your testimony in that case?

A. Well, I testified as to the variances, errors in the computation of districts and the like.

Q. So your testimony was that the plan was unconstitutional?

A. In effect, yes.

Q. And what result did the Judge reach in that case?

A. The district plan which the Board had promulgated was held to be infirm.

Q. What was your testimony in the case of Hall versus Issaquena County Board of Supervisors?

A. This involved an analysis of the plan which was adopted by the county Board in either late 1971 or early 1972. I testified as to the variances in the plan as to mathematical errors in the plan, boundary descriptions in the plan, and I also prepared plans which were submitted—four plans which were submitted to the Court for [9] consideration in that case.

Q. Was your testimony in that case accepted by the Board of Supervisors to the extent that they considerably altered setting up their boundary lines to meet your objections?

A. The Board of Supervisors, after seeing our proposal—my proposals, revised their plan and in effect adopted for three out of the five districts the districts which I had suggested in one of my plans. The other two districts were different, and the revised supervisor's plan was the plan adopted by the Court.

Q. What was your role in the litigation involving the 1971 legislative reapportionment?

A. I prepared statistical analyses of the House Pill 515, which was the legislative act redistricting—reapportioning the House and Senate, and these figures were submitted in a brief to the three-judge District Court. And these figures, at least on the Senate side, were cited by the Court in holding the plan to be invalid—constitutionally infirm.

Q. Are there any other cases in which you have testified or prepared statistical material?

A. I did work in a very preliminary way but did not testify in connection with a number of other county districting [10] cases, suggesting ways in which the variances could be computed or could be shown to be excessive. It seems to me that I prepared a small amount of material in connection with Forrest County, as I recall, Oktibbeha County—and I think that would cover it.

Q. As a result of this experience and as a result of your reading and training are you familiar with the means by which mal-apportionment is calculated and measured?

A. Yes.

Q. Are you familiar with the court decisions and constitutional requirements relating to the requirement that legislative districts must be equal in population?

A. Yes.

Q. Have you examined the House Bill 1389 and Senate Bill 2452 which is the subject of this lawsuit?

A. Yes.

Q. Have you examined the floterial districts which are provided under the Legislature's plan which is currently before the Court?

A. Yes.

Q. How many floterial districts are in the Senate Plan?

A. One.

Q. How many floterial districts are in the House plan?

A. Seven.

[11] Q. Would you define for the record, please, what we mean when we say 'floterial district'?

A. A floterial district is a special type of multi-member district. It involves two stages in the allocation of representatives. The initial stage is the award of the apportionment of the number of representatives to what is initially a multi-member district—conventional multi-member district. The second stage involving setting up the floterial district is to take one or more of the apportioned representatives and elect them at large or elect the one representative at large throughout the whole conglomerate district. The remaining representatives are then assigned to subdistricts and they are elected from those sub-districts only.

Q. The records in this case indicate the population deviation in floterial districts has been calculated on the basis of taking the whole population of the entire district containing one or more counties, dividing it by the total number of representatives assigned to that entire district, and then calculating the deviation from the norm on the basis of the result achieved by that division. In other words, the deviation has been calculated on the basis of total population of the entire district. Have you examined this method of calculation to determine [12] whether it accurately measures the standard of deviation from population equality?

A. I have examined that method applied to floaters, yes.

Q. And does it accurately measure the standard of deviation from population equality?

A. No.

Q. Why not?

A. Let me illustrate by taking a specific district. House District 4, which was established as a five-member district. It consists of three counties—Itawamba, 16,847; Lee County, 46,148; and Monroe County, 34,043. So that the population of the entire conglomerate is 97,038. If you divide—and this was the apparent procedure which was followed by the court in 1971—this district and the other districts are the same in the 1973 legislative plan as under the 1971 court plan—to divide that figure of 97,038 by five you come up with a percentage variance of 6.808%+. The reason for that is that the ideal conventional multi-member district would be a multiple of five of the norm of 18,171, and this would be a little over 90,000, so that there's an excess there of about 7,000 which drives the variance computed as the court computes it for conventional multi-member districts to 6.808%+. When you examine the [13] floterial breakdown the largest county—Lee—is assigned two representatives for a population of 46,148. Itawamba County, with a population of 16,847, is assigned one representative, and these are direct representatives. Monroe County, with a population of more than twice the size of Itawamba County,

at 34,043, is also assigned a single direct representative. The fifth representative is the at-large floater elected by all three counties. If you take Itawamba County and examine it as a—if you were to consider this as a single-member district—if this had been set up as a single-member district it would be more than 7.2% under the norm. In other words, it is over-represented. The floterial arrangement gives a direct representative to Itawamba County, in other words leaving aside for the moment the effect of the at-large floater, Itawamba County with a direct representative at that point is in the position of a single-member district of 16,847. In other words, more than 7% under the norm. I think I can give you an exact figure on that—7.286% under the norm. Now according to the mathematics used by the court, by assigning part of an additional representative—by giving the residents of Itawamba some role in the selection of still another representative——

[14] Q. That would be the floater representative?

A. The floater representative, yes. You suddenly move Itawamba to a position where it is under-represented, and this logically makes no sense. In other words, Itawamba, by virtue of the direct representative, is going to be over-represented by 7.286%. Any additional representation will have the effect of increasing the over-representation, yet the court concludes—the court's mathematics suggest that in fact the result of adding to Itawamba involvement in the election of the floater is to have the effect of driving the population variance to the plus side of the norm. This is not logical; it is not rational—it makes no sense.

Q. What is the measure of over-representation accorded to Itawamba County by assigning it one whole representative elected by the county and a fraction of the floater representative, which is 16,847 over 97,038?

A. Well, the effect of this is to produce a variance of 21.000% minus.

Q. Does that result in over-representation or under-representation of Itawamba County?

A. Well, it represents substantial over-representation of the residents of Itawamba, and I think just looking at the comparative position of Itawamba residents with Monroe [15] residents, Monroe County of 34,000 is almost large enough to elect two representatives in its own right. In fact, it's twice the size of Itawamba, yet within the allocation of

direct representatives Itawamba gets as much representation as Monroe, being assigned one direct representative.

Q. Is Monroe County in that floterial arrangement over-represented or under-represented?

A. It is under-represented with a variance of 38.694%+. In fact it's rather grievously under-represented given that large a variance.

Q. In measuring mal-apportionment in floterial districts why is it necessary to measure the county share of representation?

A. Well, I think I can answer this by coming at it this way. If you use the method which the court has relied on for non-floterial—let's say conventional multi-member districts—at best you only reach the initial apportionment of representatives to the area—you don't reach the secondary allocation of the assignment of some of the quota of representatives to the subdivisions on a direct representative basis. The only way that you could maintain the variance you—the court comes up with at the initial stage would be to create balanced [16] subdistricts to the extent that you imbalance the subdistrict in terms of their population size—you create a very strong bias which the floater delegate does not adequately compensate for, and this will drive the norm—drive the variance off in one direction or the other the greater the imbalance in the size of the subdistricts. Then as a general matter, the greater your variance in either a positive or negative direction, depending upon the particular population figures involved.

Q. When then is the initial calculation made in that district of 6.808%—why is that a defective calculation?

A. It is a defective calculation because it does not reflect the secondary allocation. It doesn't reflect the fact that the multi-member district has been broken up into parts, that the parts are imbalanced in terms of population. It really does not take account of that factor at all, and therefore it produces—well, it can produce an absurd result, and I can illustrate this by suggesting that if the method applied by the court were used it would be possible in the extreme case to assign 120 members of the Mississippi House of Representatives to the smallest county in the state—Issaquena County with a population of 2,737; to assign to the remaining 81 counties of the state having a population in excess [17] of two million one direct representative, and then to

elect at large throughout the state the 122nd representative. That would in effect make the state one large floterial district, and if the mathematics employed by the court were applied to that situation you would produce a zero deviation on the theory that the total state population—the total size of the district would simply be divided through by 122 and you would come up with, of course, a perfect norm of 18,171 on the House side. If this were applied to the 1971 legislative plan which the court found to be unconstitutional—if this mathematics that the court used for floaters were valid then that plan could be relative by reducing Hinds County's allocation of representatives, which was one short under the 1971 plan—they gave them only 11 representatives—reducing that figure to 10 and then taking that representative, electing him at large throughout the state and again calling the state one big floater district. Or you could do this on a regional basis. If you apply this to the Tennessee apportionment that the Supreme Court faced in Baker against Carr, then that plan could be cured by taking one representative from Shelby County, electing him at large, and you would have the perfect legislative plan. Again, if this mathematics [18] used by the court were applied in that situation.

Q. Have you calculated the deviations for population equality in the floterial districts as established by House Bill 1389 and Senate Bill 2452?

A. Yes.

Q. What are the deviations from population equality in Senate District No. 27?

A. For the Jones subdistrict, 10.708% minus, which is by the way over—one of the variances cited by the court in the District Court 1971 opinion—one of the variances used by the court in overturning the legislature's 1971 plan. The court found that that variance had no rational basis, and listed that variance among the deficiencies which required validation of the plan. For the other subdistrict consisting of four counties—Covington, Lawrence, Marion and Jefferson Davis—the variance would be 5.923% minus.

Q. What are the deviations from population equality in House District No. 1?

A. For the Benton-Tippah subdistrict, 12.091% minus. For the Alcorn subdistrict, 2.735% minus.

Q. What are the deviations from population equality in House District 4?

A. For the Itawamba subdistrict, 21.000% minus. For the [19] Monroe subdistrict, 38.694% plus. For the Lee subdistrict, 2.587% plus.

Q. What are the deviations in population equality in House District 11?

A. For the Coahoma subdistrict, 14.160% minus. For the Quitman-Tunica subdistrict, 8.519% plus.

Q. What are the deviations from population equality in House District 23?

A. For the Lowndes subdistrict, 7.859% plus. For the Noxubee-Oktibbeha subdistrict, 3.874% minus.

Q. What are the deviations from population equality in House District 25?

A. For the Newton subdistrict, 24.269% minus; for the Clarke-Jasper subdistrict 5.421% plus.

Q. What are the deviations from population equality in House District 28?

A. For the Madison subdistrict, 16.587% plus; for the Rankin subdistrict, 6.879% minus.

Q. What are the deviations from population equality in House District 35?

A. For the Lincoln subdistrict, .710% minus; for the Pike subdistrict 12.900% plus. This yields overall on the House side—this extends the maximum variances.

Q. What is the span of variance on the House side?

[20] A. 62.963%.

Q. What is the span of variance on the Senate side?

A. 20.292%.

Q. Is the method by which you calculate deviations from population equality in floterial districts supported by any court decisions or judicial precedent?

A. There are some similarities to the method in Stout against Bottor, an Indiana case. In the Virginia case there were efforts at the District Court level to compute variances for floaters using an alternative approach which, if correctly applied—and it was not in that Virginia case—would produce similar results. There are problems with the method used in the Virginia case.

Q. Are there any court decisions supporting generally the notion of calculating the county share of a floterial district other than the ones you mentioned?

A. Well, there are court decisions—a number of court decisions upsetting floterial districts. The Texas case, Kilgallen against Hill, held floterial districts under the circum-

stances in Texas to be constitutionally infirm. If my recollection is correct the Supreme Court did not disturb that part of the court's opinion. If my recollection is correct. [21] You have before you notes on which you have shown your method of calculation of the deviation from population equality in each of the floterial districts?

A. Yes.

Q. Could that be made an exhibit to your deposition?

A. As far as I'm concerned, yes.

BY MR. PARKER: I ask that this be marked as an exhibit to the deposition.

[WHEREUPON the seven-page document entitled "Computation of Variances in Floterial Districts" was received and marked as Exhibit No. 1 to the deposition of Mr. Sweeney. This exhibit is appended to this deposition.]

Q. Have you examined the State Legislature's plan with regard to its racial effects?

A. The 1973 plan?

Q. Yes.

BY MR. LADNER: We object to the relevancy.

Q. You may answer the question.

A. I have made a very quick analysis of this. I have examined it, but not in great detail—enough to notice a few things.

Q. Have you noticed and observed any racial differences or racial disparities in the way in which multi-member and [22] single-member districts are distributed in the House side and the Senate side?

A. Yes. If you examine the predominantly black counties —and there are 25 of these in Mississippi—you will find that every one of those predominantly black counties save one—Tallahatchie—is thrown into a multi-member district. In other words, there is a multi-member district alignment. That applies, as I say, to 24 out of the 25 predominantly black counties.

Q. Are you referring to the Senate plan or House plan?

A. I'm referring to the House side now.

Q. How are majority white counties treated in terms of the multi-member or single-member district arrangement in the House plan?

A. Well, in the House plan 33 of the 57 predominantly

white counties elect representatives in single-member districts.

Q. On the Senate side are there any racial differences in the way multi-member and single-member districts are assigned?

A. Yes. On the Senate side 8 out of the 25 predominantly black counties elect their senators in single-member districts, and——.

Q. Does that mean that 17 do not?

A. That is right. 17 of the predominantly black counties [23] are in multi-member districts. And on the Senate side 33 of the 57 predominantly white counties elect their senators in single-member districts. I wish to correct the statement before. I cited the figure 33 out of 57 with regard to the House. That is not correct. And I don't think I have the other figure right at hand.

Q. As a political scientist do you know whether there are any advantages or disadvantages to electing representatives in multi-member districts?

A. I think it's clear that any decision to draw a district line has some political effect. The size of the district from which representatives are elected has some political effect. As a general matter, as the district is enlarged, for example by electing a number of representatives in a multi-member arrangement, *the effect is to submerge minority interests.* These may be partisan interests, they could be ethnic interests, they could be economic, they could be racial—they could be defined as any number of ways, but the effect is to submerge such minority interests and make it less difficult for such minority interests to elect members of their own group.

Q. You said less difficult? Did you mean——?

A. Oh, no. It would make it more difficult for them to [24] elect members of their own group. Generally, where you have smaller election districts you are more likely to produce overall a better representation of the diverse elements in the state, and you're less likely to submerge such elements and see them overwhelmed by whatever majority prevails in a large multi-member district.

Q. Is this just your own personal view, or is this view shared generally by authorities in the area?

A. Well, I think this is generally recognized among the political scientists. I think it's recognized among practicing

politicians here in Mississippi following franchisement of blacks after passage of the Civil Rights Act in 1965. There was extraordinary interest at the state level and county level in moving to multi-member districts. There were efforts to move in the direction of consolidating counties, and I think that practicing politicians and political scientists recognize that the purpose of this was to forestall or prevent the possibility that blacks might be elected to political office, either at the county level or the legislative level.

Q. Have you examined the creation of multi-member districts in the 1973 Legislature's plan to determine whether it has the effect of diluting or cancelling out the votes of black people in Mississippi?

[25] A. I have looked at the plan, yes. I think there are a number of predominantly black counties at the northern part of the state—Marshall County, for example, which is a county of 24,000 people.

Q. What is the racial composition of Marshall County?

A. Well, it's a predominantly black county.

Q. How is Marshall County treated under the House plan for legislative reapportionment?

A. On the House plan it is placed in a multi-member district with DeSoto County. It's a three-member district. DeSoto County is a predominantly white county, and of course the effect of this is to produce overall throughout the district a white majority, transforming in effect the black majority in Marshall County into a white majority overall.

Q. How does the population of Marshall County compare to the norm?

A. It is, as I have indicated,—well, it's 24,027 persons, and this would mean that under a single-member district system—well, let me put it this way, it would be one and a third of the norm. In other words, an entitlement there of one and a third representatives in its own right as a county —use that criteria.

Q. Is the population of Marshall County, given a norm of [26] 18,171, large enough to entitle Marshall County to elect a representative of its choice under a single-member district plan?

A. Well, the population, yes, is sufficient to do this—more than sufficient. Marshall County on the Senate side is also placed in a multi-member district with DeSoto County and

Lafayette County, and again the effect of this alignment is to create overall throughout the county a white majority. It has the effect—throughout the district, I beg your pardon. The share—on the Senate side the share that Marshall County has of that overall district is roughly half of it would have in a single-member district. And of course aligned with Tate County which has a population of 18,544 it would be an ideal single-member district.

Q. For the Senate?

A. For the Senate, and it would have a share of the single-member district which would be the ideal if one used the county as a criterion in building a district.

Q. How does the population of Panola County compare to the norm on the House side? Just tell me whether it is in excess of the norm.

A. Well, it's in excess of the norm.

Q. What is the population of Panola County?

[27] A. 26,829. It's entitled to a little bit less than one and a half representatives.

Q. What is the racial composition of Panola County?

A. It is predominantly black.

Q. How was Panola County treated under the House plan?

A. It is joined with Yalobusha County.

Q. What is the racial composition of Yalobusha County?

A. Predominantly white.

Q. What is the effect of combining Panola and Yalobusha? What is the racial effect?

A. Creates a white majority.

Q. What is the population of Madison County in comparison with the norm?

A. Madison County has a population of 29,737, so that it is entitled to one representative and almost two-thirds of a second representative using the criterion of the county as a unit.

Q. What is the racial composition of Madison County?

A. It is a predominantly black county.

Q. How is Madison County treated in the House plan?

A. It's joined to Rankin County in a floterial district—four members allocated overall to the district.

Q. What is the racial effect then of combining majority black counties and majority white counties in [28] legislative districts?

A. Well, this depends on what the figures are in the various counties involved. There are a number of instances in the 1973 Legislative plan where predominantly black counties are joined to predominantly white counties, and the black-white population overall is such that the result is a white majority multi-member district.

Q. What effect does this have on the opportunities of voters living in black majority counties to elect representatives of their choice?

A. It makes it very difficult. It poses a barrier, particularly in connection with the procedures for election—election procedures in Mississippi for nominating candidates for the State Legislature.

Q. What election procedures in Mississippi are you referring to?

A. Well, I'm thinking of the fact that under Mississippi law to become a nominee of a political party one has to attain in a primary election a majority of the votes. There are no plurality winners in primaries in Mississippi. If a majority is not attained in the initial primary then a run-off primary is held between the top two vote getters, and the one gaining the majority wins. [29] So that where you have districts, particularly large districts set up so that the black population is overwhelmed by white majority, this in the context of Mississippi makes it extremely difficult for blacks to gain the nomination of a political party, whether it's the dominant party—the Democratic party or the Republican party, and the benefits that come from the party label—the known label, publicity, access to financial or whatever other resources the party may provide. It tends to make it extremely difficult if not impossible for blacks to gain partisan nomination, and the result then is to qualify in the general election as independents.

Q. Do you know of any instance in which a black legislative candidate—that is for the State Legislature—has gained a party nomination?

A. As far as I have been able to determine in the twentieth century no black candidate for the State Legislature has received the nomination for a legislative position for either the House or the Senate.

Q. Does the full slate voting requirements of Mississippi law have any racial effect in this regard?

A. Well, would you explain particularly what you are referring to?

Q. Mississippi law requires that, for example, in a multi-[30] member district system that members in the multi-member district are required to run by posts—that is in the statute.

A. You are referring to the post system?

Q. Let me finish. That post system is provided by the statute which is now under examination. Further, Mississippi law requires that the voter must cast total number of votes equal to the number of positions to be filled, or otherwise his ballot is ruled void. In other words, if there are three posts in a multi-member district system, a voter must cast three votes, one for each post to be elected, or his ballot is void. In your view as a political scientist who is familiar with Mississippi conditions, does this have any racial effect?

A. Yes. The post system—the normal alternative to this in an election system in which the various candidates run in a group and the top vote getters get the nominations or get the seats if it's a general election. This permits what is sometimes called bullet voting where the voter will go in and vote only for his first preference. Under such a system if you vote for other candidates in effect you're counteracting the effect of your initial vote for your preferred candidate. Where bullet voting is permitted the opportunities for a [31] minority to break through the system and elect one of their own is enhanced. Where you have a place system, as you have in Mississippi, there is no bullet voting and this places and tends to spotlight the black candidates and make them targets afforded by political majorities.

Q. What is the racial effect of this system, if any?

A. Well, I think the racial effect of the system is again to pose a serious obstacle to election of blacks in the Legislature.

Q. Have you examined the census data for Hinds County to determine whether it is feasible in Hinds County to provide a single-member legislative plan for the House and the Senate?

A. Yes.

Q. What census materials have you examined, and which census materials have you used in this analysis?

A. I have used the census tracts for the Hinds—Jackson Standard Metropolitan Statistical Area. I have used the block statistics for the Jackson Metropolitan area. I have used the initial computer print-out of Enumeration Districts for Hinds County, Mississippi, and the U.S. Bureau of the

Census revision notes to MCD's, places, tracts and block groups or ED's, Hinds County, Mississippi, [32] dated March 3rd, 1972. If you want a more adequate citation of the other materials I can give them to you.

Q. Are they contained in the plan?

A. Yes.

Q. Are block statistics now available for Hinds County?

A. Block statistics for Hinds County were issued in August of 1971 in Report HC-3-133.

Q. Was there an earlier period in which block statistics were not available for Hinds County?

A. That is correct. Normally these block statistics come out later than the ED material or than the initial census material data dealing with county population, minor civil divisions, census divisions and so forth.

Q. Have you in fact prepared a plan for single-member districts for the legislature in Hinds County?

A. Yes.

Q. I hand you a document which bears the caption of the case and ask that you identify that.

A. This document contains the several plans—single-member district plans, House and Senate, which I prepared for Hinds County, Mississippi in 1972.

BY MR. PARKER: I'd like to ask that this be marked as an exhibit to the deposition of Mr. Sweeney.

[33] [WHEREUPON the 151-page document entitled "Plaintiffs' Proposals For Single Member Districts For Hinds County" was received and marked as Exhibit No. 2 to the testimony of Mr. Sweeney. This exhibit is appended to this deposition.]

Q. Is this the plan which Mr. Taylor and I presented to the joint Legislative Committee in January of 1973?

A. That is my understanding, yes.

Q. What does your plan do?

A. Do you want me to explain the criteria?

Q. Yes.

[LUNCH RECESS—12:00 to 1:00 P.M.]

Q. Would you describe the salient characteristics of your Hinds County Single-Member Legislative plan?

A. May I describe the criteria first?

Q. Yes.

A. I have indicated on Page 4 of the Hinds districting proposals the criteria used. The goal—fundamental goal was to hold population variances among the districts to a

minimum with the idea of getting as close as I could to equi-populous districts. Another criterion was to have each district contiguous, which is to say all parts of the district ought to be touching or, as was defined earlier, so that you could walk to any part of [34] the district without leaving or crossing the boundaries of the district. Third, that districts should be reasonably compact, and fourth—the fourth criterion here was to try to see how far we could go in setting up single-member districts without disturbing existing precinct boundaries to come up with a plan that could be easily implemented. So these were the basic criteria developed in drawing up the plan.

Q. Are you satisfied with these criteria?

A. Yes. Now the different criteria produced different tensions. In other words, it is possible to reduce the variance somewhat by breaking more precinct boundary lines. If you emphasize the objective of equi-populous districts and place less stress on the adhering to precinct boundaries you can, as under Plans B for the House and Senate, get quite close to equality in population of the districts.

Q. How many plans do you have for the House?

A. I have two basic plans for the House—A and B.

Q. How many plans do you have for the Senate?

A. If I may finish my previous response——. There is also for the House a Plan A-1, which is a slight adaptation of Plan A, House—very minor change to permit it to be used in a different combination with the Senate proposals.

[35] Q. How many plans for the Senate?

A. I have two basic Senate plans—A and B, and again one option, Plan B-1 which is essentially the same as Plan B—very minor differences. Again, the idea is to provide more flexibility in terms of combinations possible.

Q. In the House side what is the difference between Plan A and Plan B in the House?

A. One difference between Plan A, House and Plan B, House is that Plan B attains a lower maximum variance and a lesser span between the most populous and least populous districts.

Q. What are the spans?

A. For Plan A of the House the maximum variance is 2.518%, and the span is 3.573%. For Plan B the maximum variance is 1.295%, and the span is 2.238%. These data appear on Page 16 in a table.

Q. Now what is the population—what population figures did you use in drawing these single-member plans for Hinds County?

A. Hinds County was assigned 12 representatives. Under the court plan it was treated as severable from the rest of the State. If assigned 12 representatives overall there you have a variance of 1.414 minus, with a norm of 17,914. [36] In other words, overall in Hinds County you have a shortage of roughly 3,000 people, and this has the effect over the county—the shortage from the ideal norm for a 12-member district, but you still come out if you have a perfect division of the county with a norm of 17,914 and a percentage variance of 1.414% minus. So that is your goal, unless you decide of course to break into Hinds County and attach adjacent counties.

Q. Have you done that?

A. Not in this plan.

Q. Now what was the source of your population statistics?

A. The source would be the official data of the United States Census Bureau for 1970.

Q. Did you use any data other than U.S. Census data?

A. I did not.

Q. You relied exclusively on United States Census data?

A. The population figures are the figures—the official figures of the Bureau of the Census.

Q. What was your source of information for the precincts in Hinds County?

A. The precincts—I relied on the legal descriptions of the precincts which appear in the Minutes of the Board of Supervisors of Hinds County. These legal descriptions are also obtainable for the city from—for the City of [37] Jackson.

Q. To what extent do your proposed legislative districts for Hinds County follow pre-established precinct lines?

A. The congruence—I should say they follow precinct lines under Plan A for the House and Senate with the following exceptions. First, the existing Van Winkle I precinct and Midway precinct. The eastern part of those precincts is removed and shaped into a new precinct—Midway II. Other than that, there is a slight change in two precinct boundaries as follows. The line between Jackson City Precincts 39 and 40 is moved slightly, and the line between the Byram precinct and the Red Hill precinct—these are in the southern part of Hinds County—is moved slightly. Otherwise, the plan follows entirely the existing precincts for the City of Jackson and the County of Hinds so that 111 of the 117 precincts are left as they now are. I might say also that the division into the five Senate districts can be accomplished without any change whatever in the existing precinct structure. The changes which I have just recited are required when you superimpose the House plan, and they are internal to the various Senate districts and therefore they are not affected by the lines drawn for Senate Plan A.

[38] Q. Do your B plans make additional changes—departures from the precinct lines?

A. They do in order to reduce the population variance. And it reduces the population variance by—the maximum variance by roughly 1.2% on the House side, and it reduces the span on the House side by, roughly, 1.3%. The changes made are as follows. Again, a new precinct, Midway II, is carved out of the eastern part of Van Winkle I precinct and Midway precinct. Secondly, slight shifts are made in the line between Precincts 39 and 40, Precincts 17 and 13, Precincts 65 and 66. There is a new precinct, Raymond III, carved out of the western part of existing Raymond I and Raymond II precincts, and there is a division of old Byram precinct into two parts. And we also shift the line between Red Hill and Byram precincts. Altogether, 104 of the existing 117 precincts are left undisturbed.

Q. Is that in the House or the Senate plan?

A. That is on the House Plan B, and if used with Plan B of the Senate you would have the same boundary changes.

Q. What page in your plan is this?

A. That appears—there is a table at Pages 14 and 15 which indicates the various precinct changes in detail.

Q. Now when you gave us the maximum variance and span [39] figures were these based on a Hinds County norm or a statewide norm of 17,171?

A. The figures which I just gave were based on a Hinds County norm.

Q. Could you give us the same figures based on a statewide norm of 18,171 for the House and equivalent figure for the Senate?

A. Yes. The maximum variance in terms of the state norm of 18,171 for Plan A would be 2.454% minus.

Q. What's that? Maximum variance or span?

A. That's the maximum variance. And the span would be 3.522.

Q. Which is Plan A for the House?

A. Plan A for the House.

Q. Plan A for the Senate?

A. Plan A for the Senate in terms of the Hinds norm?

Q. No, statewide norm.

A. I beg your pardon. In terms of the statewide norm would be maximum variance of 1.224% plus, and all of the variances there in terms of the state norm are on the plus side because the Hinds norm is slightly higher than the state norm. Therefore, from zero to the extreme variance in term of the state norm—it would be the same, 1.224%.

[40] Q. That's the span?

A. That's the span in terms of zero. Actually it's less than that if you compare the smallest district and the largest district—it would be .867%. The point is that all of the districts are over the state norm so that you're comparing a plus variance with a plus variance.

Q. Zero plus what?

A. .867%.

Q. Plan B—can you give us the maximum variance and the span for Plan B, House and the Senate, based on the state norm?

A. On the state norm Plan B of the House, maximum variance is 2.344% minus.

Q. And the span?

A. Again, if one computes the span from zero then it would be 2.344% minus. If you compute it on the basis of, again, the smallest and the largest district—all districts being on the negative side of the state norm—then it is 1.931%.

Q. Variance?

A. No, that's the span. 1.931%.

Q. All right. For Plan B for the Senate?

A. Plan B for the Senate has a maximum variance of 1.187% plus. [41] Again, the same problem of computing from zero—all districts being slightly over the norm—it would be 1.187% plus, computed on the basis of the difference between the largest district and the smallest district. Again, we're talking about all districts being on the plus side of the norm. It would be .511%.

Q. So I gather from the figures that you've given us based

on the state norm none of the districts provided under your single-member Hinds County Reapportionment Plan are over 3% in terms of the variance from the population equality, is that right?

A. Are you speaking of maximum variance now?

Q. Yes.

A. That is correct.

Q. Is any district over 3%?

A. Based on the state norm?

Q. Yes.

A. No. If I may finish my previous response, there is no district under my plans which, measured by the state norm, has a maximum variance of as much as 2.5%. They are all under that as far as maximum variance goes, measured by the state norm.

Q. How did you calculate the population of legislative districts in instances where you were required to break [42] precinct lines?

A. Well, one simply refers to the census data—ED's, the census blocks and the census tracts. And this provides the basis for coming up with a population figure. Where precinct lines are broken I have drawn new precincts to accommodate those changes, and for the areas encompassed by the new precincts I have firm population figures. In other words, there is a congruence between the precincts and the census ED's, census blocks and the like to have a coterminous situation in other words.

Q. Are there any instances in which you have broken census blocks.

A. There were a few instances in which census blocks were divided by an ED. Where that is the case one can come up with a figure—an accurate figure for the fragment of the block simply by comparing the ED totals, the totals for the blocks themselves which are not broken and subtract the total for the blocks which are not broken from the ED total, and this gives you the population in the split block. In other words, you're dealing with breaks which follow ED boundaries, and by comparing the ED figures with the block figures you can come up with an accurate figure for the block fragment.

Q. Will you describe so that the court will understand what [43] a Census Enumeration District is?

A. Yes. A Census Enumeration District is a small popu-

lation area averaging roughly 1,000 residents, and defined by the Census Bureau for use in the actual collection and tabulation of population and housing data.

Q. Is that the largest census unit used in Hinds County?

A. No, there are larger——.

Q. In terms of area?

A: There are larger units used in terms of area. These would be census tracts.

Q. What is a census tract?

A. Well, a tract is an area larger than a typical ED normally. Nevertheless it is still a fairly small area—a relatively permanent area established usually cooperatively by the local officials and the Census Bureau, and designed initially at least to encompass roughly 4,000 residents. Tracts are made up of ED's.

Q. What is a census block?

A. A census block is a very small area usually. It's usually rectangular, bounded by streets or roads. It most often consists of an ordinary city block or sometimes several ordinary city blocks grouped together. You will have some census blocks which may be irregular in shape—they would be bounded by railroad tracks, streams or [44] other features. The census block in the urbanized area is the smallest census unit that the Census Bureau makes available. Publishes.

Q. Which of these geographic designations has accurate census population data available?

A. It's available for all of these units—tracts, ED's and blocks.

Q. In the City of Jackson what is the relationship between voting precinct lines and census tracts, if any?

A. There is some relationship. Generally the Census Bureau—I'm speaking as a general matter—in setting up tracts attempts to come up with something of a somewhat permanent character, and normally they will attempt to gear the tracts somewhat to jurisdictional lines which are important in the community, such as precincts, so that there is some correspondence between blocks or precincts and census tracts. Certainly there is not complete correspondence though as far as tracts are concerned.

Q. What degree of correspondence is there?

A. That's hard to express in quality of terms. Normally you group together precincts and come up with a conglomeration that is congruent with a tract, but not in all cases. This is in the City of Jackson.

[45] Q. Well, my question is: in Jackson do the precinct boundaries generally follow the boundaries of the census tracts or not?

A. Well, normally the census tracts are large enough so that they will encompass a number of precincts. In some cases there would be correspondence and in some cases not. Now at the tract level you're dealing with a geographical unit which is larger than the ED, and when you get down to the ED level then you will find groups of ED's often are congruent with a particular precinct. In some cases if you put two contiguous precincts or three con guous precincts together you will find a correspondence between whole ED's and the areas which is encompassed within the several precincts. In some cases if you want exact figures for a precinct you will have to go to the next level—blocks.

Q. So you are saying that in Jackson precinct lines generally follow ED lines? Is that your testimony?

A. They often do, but there are exceptions to this.

Q. With what degree of frequency do precinct lines coincide with ED lines?

A. I would think—and this is based not on any statistical analysis of the number of times this occurs—that again if you go to grouping precincts you can find correspondence [46] between groups of precincts and ED's. I would make a very rough estimate—maybe 70% of the time. That's a very rough estimate.

Q. Does this make it easier or more difficult to draw single-member legislative districts within the City of Jackson and Hinds County? That are equal in population?

A. Does what?

Q. The coincidence between ED's and precinct lines?

A. Well, where we find a congruence between ED lines and precinct lines it's easier to employ precincts. Now if you find they are not congruent you still frequently will be able to find an exact population figure for a precinct. In other words, it may consist of one whole ED and a portion of a second ED, and if this is customarily the case, you consider say half an ED and you then go to the blocks—the next level. And you find then an exact figure adding up all the blocks, and that portion of the ED which is attached to the other

ED in the precinct that way you come up with an exact figure.

Q. Are there any instances in which you departed from any of the lines drawn by the Bureau of the Census?

A. There are several instances which I have indicated—which I referred to in the early part, and which I indicated in footnotes. Footnotes 2 and 7 on Pages 17 [47] and 18. The situation in each case is described in the footnotes. One of these was a case in the northern part of the county between the Hinds-Madison County lines and Presto Lane. The west boundary of ED 78 runs down State Street. The boundary of Precinct 80 runs down the Illinois Central Railroad. There is an overlap there consisting of the space which is about 50 feet between the road and the railroad. And what it consists of is railroad embankment and a drainage ditch. There is no dwelling unit in that place, so that you have got there broken blocks, and I inspected the physical situation. I happen to know that particular area well because I lived in that area—I lived in that area at the time of when the census was taken. It's physically impossible to put a dwelling unit in that space. The road actually abuts the railroad right-of-way—we are talking about the distance between the highway and the tracks, and I made a judgment that that part of the blocks that overlap there is unpopulated. There is a similar——.

Q. Does that affect the accuracy—that departure from census boundaries, does it affect the accuracy of your populated. There is a similar——.

A. I don't see how it could. It would be foolish to assume [48] that anybody could live in that space. No dwelling place could be placed there. It would be, I think, absurd to suggest that.

Q. Would you describe the second instance in which this occurred?

A. Yes. This involves a similar situation where a highway runs along and lies immediately adjacent to a railroad track. This appears—this is described in detail on Page 22, Footnote 7. This involves a stretch of road—North McRaven Road, or as it's sometimes known, the Lynch Street Extension, where again there is an overlap between several census blocks and the precinct line. Again, you've got a situation between the edge of the road shoulder and the edge of the tracks. Again you've got an embankment, you've got a drainage area, and it varies from 25 feet to 60 feet.

And, again, I made a judgment that there is no population in that area. Physically, again, it's impossible—and again this is based on a physical inspection of the site. I might say too that some of these blocks that are involved there are indicated by the census data as containing no population, so that if you break up a block of no population you are having no effect whatsoever on the population figures.

[49] Q. In deriving this reapportionment plan for Hinds County did you in any way consider racial composition of the legislative districts which resulted, or racial composition of the population statistics with which you worked?

A. No, I did not. I did not compute or compile or attempt to determine any racial percentage or racial figures. I kept my attention away from such material, so that these are the figures of population that I was working with, and I eschewed any consideration of demographic factors of any sort. Other than population.

Q. Did you draw this plan to the advantage or disadvantage of any racial group?

A. I did not consciously attempt to advantage or disadvantage any group as far as where I placed the boundaries.

Q. Is your plan feasible? Can it be implemented?

A. I think it can be implemented very easily, especially since I have provided complete legal descriptions for every district, House and Senate. I provided complete legal descriptions for any precinct change which would be required, and particularly under Plan A the precinct changes are very limited—very few in number. I think it could be quite readily implemented.

Q. Would your plan, if implemented, cause chaos at the polls?

A. I don't see how it could. Most people in the county—[50] 97% of the county would be voting in the same precinct—there would be no change in precinct whatsoever. There would be a few precincts in which there would be changes, some of them very minor changes. And I really don't think that the changes would be of a magnitude to cause chaos even there.

Q. Would the vast majority of the population of the county still vote at the same polling place?

A. Oh, unquestionably. Again, I would estimate in the order of 97% of the people would vote at the same polling place.

Q. Would implementation of your plan require reregistration of Hinds County voters?

A. I should think not, no.

Q. Why not?

A. Well, the changes are so few that I see no reason why they could not be implemented administratively—administrative transfer. As is done in some counties.

Q. Do you know of any instances in which precincts and election districts have changed and have not required reregistration of voters?

A. Generally throughout the state?

Q. Yes.

A. As I recall, in Adams County precinct changes—some of [51] the more sweeping precinct changes than were involved here—in a county of some 37,000, were put ino effect and the necessary adjustments were made through administrative transfer without a reregistration of the voters.

Q. In your view as a political scientist, would the implementation of any of your Hinds County reapportionment plans destroy effective representation of Hinds County voters in the State Legislature?

A. No.

Q. Why not?

A. I don't see how it could. It's not apparent to me any reason for coming to the conclusion that this would destroy the effective representation of Hinds County voters in the State Legislature. I don't see any basis for that.

Q. As a political scientist, Mr. Sweeney, would you be able to say whether the implementation of your reapportionment plan for Hinds County would enhance effective representation of Hinds County in the State Legislature?

A. Hinds County as a whole?

Q. The voters of Hinds County or any segment thereof?

A. I think it's clear that by shifting from an election of 17 legislators at large, which is the current situation in the county, to electing 17 legislators from single [52] member districts you would be likely to get more representation of diverse interests within the county. These could be partisan interests. I would think, for example, one possibility might be—this is not because I planned it that way, I didn't take this into consideration—that the Republican party might well have an enhanced opportunity of winning elective office. I think that the shift from multi-member districts to single-

member districts would enhance the prospect of blacks being elected to legislative positions in the county. I think that it would work to the advantage of other groups—people who are precluded from conducting an effective campaign because of the lack of financial resources or access to publicity necessary to win office on a county-wide basis in a county of more than 200,000 people. So that I would think that as a general matter you would get a more diverse representation of various interests in the county.

Q. It has been suggested, Mr. Sweeney, that the implementation of single-member legislative districts in Hinds County should be delayed pending the establishment of new supervisor's districts. As you may know, the District Court in December held unconstitutional the present alignment of supervisor's districts and required [53] the Board of Supervisors to come up with a new plan. In your view as a political scientist should the implementation of single-member districts in Hinds County for the legislature be delayed pending final resolution of the question of the boundaries of the new supervisor's districts for Hinds County?

A. I see no basis for delay. Well, if for example Plan B House and Senate were implemented as a legislative plan, it might be possible to use the five Senate districts for supervisor district purposes. It might be possible to come up with a different alignment for the supervisor districts. You could, for example, then go to Plan A for the supervisor's districts without making any additional—without requiring any additional changes in precinct boundaries. You could go to some other combination—there is great flexibility, and I really don't see any basis for delay.

Q. In your view which should come first—the definition of the legislative districts or the definition of the supervisor districts?

A. Well, I think that as a practical matter it makes sense to define the legislative districts first. You are dealing with 17 different districts, and I think it is a little easier to set up 17 legislative districts and [54] then come in and impose a five-district supervisor plan than to go the other way and establish a five-district supervisor plan and then try to conform. A plan to elect 17 legislators—conform to that.

Q. Why? Would you explain that answer?

A. Well, I think it comes simply from the fact that you don't require as much flexibility in establishing a plan for a

small number of districts. In other words, you're dealing with fewer variables if you set up your more complex plan first and then come in with a less complex plan rather than going the reverse route. I think that as a general matter it would be easier to do this.

Q. Do you know whether there is any historical precedent for providing for legislative districts within the boundaries of Hinds County?

A. In the past there has been an internal division in Hinds County. As I recall, the division permits the City of Jackson to elect members in its own right, and the rest of the county also to elect members in its own right—as I recall.

Q. Under the Legislature's plan all of the members of the House of Representatives and the Senate are elected at large—under the plan currently up for consideration. [55] In your view as a political scientist does this have any racial effect?

A. Well, you have in Hinds County a black racial minority around 39%, and I think the effect of a multi-member election system is to submerge that minority and place them at a disadvantage in terms of electing blacks in the legislature. You go to single-member districts and I think quite clearly the normal tendency would be to enhance the prospects of black minority or other minorities to electing members of their group to office.

BY MR. PARKER: I don't believe I have any further questions at this time.

[BRIEF RECESS.]

CROSS EXAMINATION BY MR. LADNER:

Q. Mr. Sweeney, are you familiar with the contents of Senate Bill No. 2452 and House Bill 1389 as they reapportioned the State of Mississippi?

A. The 1973 acts, yes.

Q. Are these in all respects identical with the District Court plan of May, 1971?

A. Except that I believe residence requirements were placed on the House side which did not appear in the court plan. This is a requirement which also appears in Mississippi law, so it's a minor change and has no practical effect.

[56] Q. But in the main we're talking about the same plan?

A. Talking about the same plan, yes.

Q. Then this is the very plan that you characterized on direct examination as being irrational, unreasonable and making no sense?

A. I don't recall using that specific line. If you want to go back and get that—.

Q. I noted specifically that you did use that language. Do you agree with that characterization now?

A. Would you give me that again?

Q. Irrational, unreasonable and makes no sense.

A. I think there are certainly irrational aspects to it, particularly the floterial arrangements. I think the problem is defining what is rational—what is rational to somebody is not necessarily rational to somebody else.

Q. Well, without unnecessarily burdening the Court Reporter I think a scanning of your testimony would reveal that you did say that. I'm concerned with your method of mathematics for computing variance, particularly with respect to the floater districts. Are you aware that that method of calculating districts was rejected in the Mahon case—the Virginia case?

A. No, I was not.

Q. It was not rejected?

[57] A. No, I think if you look at the Mahon case the method which was used was not the same method as I am using. And, secondarily, I think if you'll read the Supreme Court opinion you'll find that the Supreme Court did not reach the question of the particular procedure involved.

Q. But the plaintiffs were saying there that the variance exceeded 16.4%, and in the dissent Mr. Justice Brennan indicated that these same plaintiffs might later go back and try to prove a different variance, did he not?

A. Brennan stated that, yes.

Q. I'll read you this. The dissent of Mr. Justice Brennan—.

A. That's the dissenting opinion, of course.

Q. Yes. "The District Court pointed out that the range of deviation may exceed 16.4%, but it had no occasion to consider whether 23.6% was the more accurate figure." So there was a question in that case about what the variance was?

A. There was a question at the District Court level. The Supreme Court did not make a definitive determination and

Justice Linquist's [sic] language was to the effect the Court declined to pass on that issue, so that it did not reach that question.

Q. But to your knowledge the majority opinion in Mahon used [58] the simple method of calculation and did not try to define whatever disparity floterial districts may indicate, did it?

A. No.

Q. Then you are in effect out on a limb aren't you in your calculation?

A. On the contrary. The first part of your previous question contains an assumption that is not correct.

Q. And what is that assumption?

A. You are assuming that the court accepted a method of computation for floaters that was used by the three-judge District Court in the Mississippi case. My point is that the Supreme Court did not pass on that issue—it declined to reach that issue, so it really did not decide the matter.

Q. Well, are you aware that—.

A. And that is a different method of arriving at it.

Q. Are you aware—.

A. Computation of floaters than I have used.

Q. Are you aware that our court has stated that this particular plan involves variation on the order of 17% for one house and 18% on the other?

A. Well, let me get the exact figures on that. The exact figures on the House side—and this ignores the effect [59] of the floaters—it simply takes the face value which I decline to do. The Court's mathematics was 19.729% total variance on the House side.

Q. What was it on the Senate side?

A. 18.903%—ignoring the effect of the floterial district in District 27—floterial arrangement in District 27.

Q. So you are now asking the court to recompute a variance which it's already determined for the same plan, is that correct?

A. I'm stating that the Court's computation—the Court's mathematics are invalid as applied to floterial districts.

Q. Actually what you're doing is treating the floaters as lesser included single-member districts, aren't you?

A. No.

Q. Well, you're redefining the constituency, then, aren't you?

A. No, the constituency is defined—the district is defined by the arrangement prescribed by the Court.

Q. But you are looking at the share of the given multi-member representation that is enjoyed by a particular county, aren't you?

A. No. I'm looking at the legislator-constituent ratio for the floater district and the legislator-constituent ratio for the direct districts. And when you sum those [60] ratios you come up with a fractional ratio which gives you a variance for the subdistrict. You do this for each of the subdistricts.

Q. Even though you say the District Court's figures are invalid you don't deny that they made a finding of fact as to what the variances are with this same plan?

A. That is, I think, a legal question as to whether or not they made a finding of fact. I am simply saying that the method of computing the variances for the districts is invalid.

Q. Would you comment on this statement from the Mahon case: "We decline to enter this imbroglio of mathematical manipulation and confine our consideration to the figures actually found by the court and used to support its holding of unconstitutionality." Does that statement not reflect that a simple method of calculation such as would compute the norm, compute the number of total population, compute the number of representatives, and then determine the variance? Do you dispute that that is not the approved method?

A. Could you restate that question as I lost the train of it as you were expressing it.

Q. Do you dispute that the normal method of computing variance is to identify the norm, total the population [61] for the constituency, divide by the number of representatives and determine how far short or above the variance that quotient is?

A. That is the method most commonly used in determining variances for single-member districts and conventional multi-member districts. I would not call this a normal or proper method when applied to floterial districts.

Q. Thank you. Where multi-member districts are used wouldn't there be a normal across the board relationship between number of multi-member constituencies and the number of seats in states where these plans are used?

A. Where multi-member plans are used?

Q. Yes.

A. Multi-member or single-member?
Q. Multi-member.
A. Complete multi-member plans?
Q. Yes.
A. In other words, no single-member districts whatsoever in the state?
Q. Yes.
A. And would there be a relationship between that and—?
Q. The number of seats?
A. Obviously, if you had a multi-member district plan throughout the House of the Legislature you would have [62] more than one seat in each individual district.

Q. I don't think you followed my question. There are 22 districts in the Senate and 52 members; 46 districts in the House and 122 members.

A. No, I think that there are 33 districts in all in the Senate and 46 in the House.

Q. So with a multi-member plan, we are talking about a ratio of constituencies to seats of on the order of one to two or one to three, aren't we?

A. Across the state on the House side you are talking about on the order of three, yes. Now it's a mixed plan.

Q. So no conceivable multi-member district plan that was at all rational would be of the kind you described where Issaquena County would enjoy one representative and the rest would be at large?

A. On the contrary we submitted in 1971 a proposed House plan with a lower maximum variance and lower span than the court plan, and in that case had Issaquena County as a single-member district.

Q. I'm sorry but that wasn't responsive to my question. Your example of Issaquena County having one representative and the rest being elected at large was just your own wild extrapolation from your own theory, wasn't it?

A. No.
[63] Q. What was it then?

A. It was a computation of the legislator-constitutent ratio as far as residents of Issaquena County were concerned, both for the subdistrict and the floater district. In other words, the residents of Issaquena—Itawamba County vote in an at-large district for the election of floater, and they also vote for a direct representative elected from the boundaries from within the county itself.

Q. You've read most of the pertinent reapportionment cases, haven't you? United States Supreme Court?
A. I've read many of them, yes.
Q. You are aware that multi-member districts are not per se unconstitutional, aren't you?
A. The Court has stated that.
Q. And you are also aware that the United States Supreme Court has rejected your arguments concerning the inadvisability of multi-member districts, aren't you? In your argument that there would be a lack of proportional representation for certain economic groups?
A. No, I don't think that's a correct statement at all.
Q. Then you deny that those two things—dilution and lack of proportional representation—were specifically and flatly rejected out of hand in Whitcomb v. Chavis? [Phonetically]
[64] A. I think you have to examine any case on the facts of the case. The Supreme Court has left open the door to show that multi-member districts under the circumstances in a particular situation do have a discriminatory effect. It has not foreclosed that possibility.
Q. You've testified that the multi-member constituency in Hinds County submerged minority interests. What interests were you talking about?
A. I'm thinking of racial interests, I'm thinking of partisan interests—there are many possible interests. I think rural people as a class—people who live outside the City of Jackson which dominates the county—there would be some tendency for their interests to be submerged where a single large city so overwhelmingly dominates the county.
Q. As a political scientist are you seriously saying that blacks don't have representation unless they're represented by blacks?
A. I would think in the context of Mississippi that blacks are not adequately represented as a general matter.
Q. What is your basis for saying that?

BY MR. PARKER: Let him finish his answer.

A. —Are not adequately represented as a general matter by the existing legislature.
[65] Q. What is your basis for that?
A. I think the basis for this—there are several bases. One, this is a state with the largest percentage of blacks in the nation—37%. Secondly, it is a state with a long history

of discrimination, exploitation, using the authority of government on blacks as a class. I think that this has left a residue and I think the residue as effects political behavior. I think as the present system is set up as a general matter the interests of blacks are not adequately represented in the legislature as presently composed.

Q. Senator Con Maloney testified that he and the Hinds County delegation were able to help Jackson State College with its appropriations because the county was not vulcanized into single-member districts. Doesn't that cut against your observations about the effect of multi-member districts?

A. It is hard for me to comment on that statement without knowing the context, but just as it stands without really knowing the context I don't agree with that.

Q. You cannot see how a large county delegation united behind a certain cause could be of more effect than 17 separate constituencies in Hinds County?

A. Well, I think it depends on what the cause is. I think [66] that there are many causes—.

Q. As a political scientist you cannot understand that?

A. I think it depends on what cause you're talking about.

Q. Talking about a special appropriation for Jackson State College.

A. I don't think the fact that you have a multi-member district election system necessitates a particular result on such an appropriation. I don't think the fact that you have an at-large arrangement means that one Senator can be effective on a particular issue.

Q. You cannot understand that there are county-wide interests that demand county-wide representation—interests which are furthered by multi-member constituency?

A. I think any decision on where you draw a boundary or what boundary you follow, whether it is a county boundary or a boundary internal to the county, has a political effect. And I think the real question here is what interests are affected by one type of political arrangement versus another type of political arrangement. So that I think there are many interests in the county and I would not accept the idea your question seems to suggest that the only interest that deserves legislative representation is an interest in which the majority of [67] the county happened to be united.

Q. Representative Lester—Horace Lester testified that having Hinds County as a multi-member district actually maximized public revenues because in a single-member set up certain areas of the county would be more hostile to taxation than others. Do you dispute that?

A. I don't see any basis from what you have given me in your statement for arriving at the conclusion which you attribute to Representative Lester.

Q. How long did you live in Hinds County?

A. About three years.

Q. Are you aware that there are certain areas in the county that are more well-to-do than others?

A. Yes.

Q. And that these same areas might be less resistant to taxation than others?

A. They might or they might not—that would depend on the effect of time.

Q. And the fact that the specific example of Representative Lester, southeast Jackson is likely to be more hostile to increased taxation than northeast Jackson?

A. Oh, I would not accept that as a general matter. I think it depends on what kind of tax you're talking about. We have different taxes, and taxes affect different interests [68] and people of different economic level in different manners.

Q. Well, at any rate you would sacrifice—

A. I would not agree with that—it is too sweeping a general thing.

Q. At any rate, you would sacrifice the interest of respecting the boundaries of political subdivisions to your own preference for single-member districts, wouldn't you?

A. Political subdivisions meaning specifically what?

Q. Counties.

A. I would be prepared to break some county lines in order to set up a single-member district plan, because I think that on balance you get under a single-member district plan statewide a better representation of the diversity of interests in a state than you get in a—what you have under the court plan which is a mixed multi-member single-member district plan with of course some of the multi-member districts running to a rather large number of representatives. Or senators.

Q. You testified on direct that single-member districts in

Hinds County enhanced the representation of a certain segment of the population, did you?

A. Well, I believe that the present multi-member district [69] system discourages the election of blacks to office. I would think that going to districts which were smaller geographically as a result of the single-member district plan would enhance the prospects that blacks would be elected to public office.

Q. But a plan written specifically to enhance their representation, wouldn't be a constitutional plan, would it?

A. You cannot go out and deliberately set up districts with the idea that you want to favor this political interest or that political interest. The proper way to develop a districting plan is to develop a set of criteria which act as restraints on you—which act as inhibitions so that when you make judgments as to where you put a boundary or how you draw a district you are operating within the context of such strictures or restraints, and these tend to encourage you to make non-arbitrary judgments—impartial judgments when you make these decisions.

Q. But your own personal preference is for greater black representation and any plan you would draft would be colored by that aim, wouldn't it?

A. Well, my feeling is that as a general matter you do not get an adequate representation of the diversity of interests in an area where you have multi-member districts. [70] That is, you get a better representation of the diverse interests where you have in contrast single-member districts.

Q. Is one of your governing assumptions as a political scientist that blacks vote for blacks and whites vote for whites?

A. I think in the context of Mississippi politics very few whites vote for black candidates. Blacks may vote for white candidates and in many cases there are only white candidates on the ballot. Blacks aren't likely to vote for weak or politically unattractive black candidates, so that I think that if there is a voting on racial lines it is primarily characteristic of the white population and the tendency which is rooted deeply in the history of prejudice and discrimination against blacks in Mississippi is to vote against black candidates.

Q. Are you aware of the legislative race which was run between Representative Kenneth Williams and candidate Aaron Henry in House District No. 11?

A. I'm not aware of the details of that race.

Q. Well, let me apprise you of the fact that Representative Williams won and that the constituency has a fairly substantial black majority. Doesn't that explode your theory?

[71] A. Could you give me the number of that district?

[Brief off-the-record pause in proceedings.]

Q. To illustrate my question I show you a schematic diagram of the House of Representatives. And you see the subject district, do you not?

A. Yes, I do.

Q. Does that district not have a substantial black majority?

A. I'm speaking of the Coahoma subdistrict now?

Q. Yes.

A. Yes, it does.

Q. Assuming with me for the moment that Representative Williams won, doesn't that result belie your theories about how people vote?

A. Not necessarily.

Q. Why not?

A. For one thing, it's a rather large district. It contains over 40,000 people, and I think that if I recall correctly in that particular county there were efforts to purge the voting rolls and to require reregistration of voters. That particular county—that area has a lot of blacks of a low level of education, they are rural and I recall there was an effort to do that. I would think that that might have had an effect of suppressing black turnout. The other thing, it is a rather large district and again [72] when you enlarge the district this I think makes it more difficult to campaign, requires more outlay of funds and so forth. So for candidates who are not well advantaged in those respects there is a disparity.

Q. It was not a case of an unknown black candidate running against a white incumbent, was it?

A. I'm not sure whether Williams was the incumbent or not. I think he was, but I don't recall that point. Henry is known, but Henry is not completely popular among blacks in that area.

Q. So blacks only vote for strong blacks and popular blacks?

A. No, I did not say that's true. I am saying that I think

that where a black candidate is perceived as being a weak candidate or where he has incurred the hostility of part of his potential constituency, I think this likely to depress the support he will get at the polls. That's all I'm saying.

Q. But if we could remove these distinguishing factors about particular blacks, wouldn't you agree that your assumption that blacks vote for blacks is not correct in theory or practice?

A. That's not what I said. I stated that in Mississippi very few whites vote for a black candidate. Therefore, when you create districts in which there is a white [73] majority it is extremely difficult for a black to gain political office. In this century in Mississippi one black has been elected to the State Legislature—one, to the best of my knowledge as far as I've been able to determine.

Q. But if blacks don't more often than not vote for blacks, how would any conceivable single-member district plan for any candidate have black representation?

A. My point in discussing multi-member districts versus single-member districts is that when you have multi-member districts, particularly large multi-member districts, this works to the disadvantage of a black minority. It works to the disadvantage of blacks in general in the sense that it requires access to publicity, it costs more, it requires campaigning over a larger area and I think that in Mississippi blacks as a class are disadvantaged in those respects, given the racial history of the state.

Q. Have you ever held political office?

A. No, I have not.

Q. Have you ever participated in any campaigns—actively participated in any campaigns?

A. Not as an active candidate or participant, no.

Q. So you don't have any down-in-the-hustings knowledge of [74] politics, do you?

A. I've been around the hustings—certainly talked to people engaged at a practical level. As an observer.

Q. You stated that the purpose of these multi-member districts was to avoid having blacks sit in the Legislature. Who told you that?

A. I think it's—I think what I stated was that one of the effects of large multi-member districts was to work against the election of blacks. I think that in Mississippi it's quite clear that the upsurge of interest in multi-member districts and county consolidation and so forth in the mid-60's was triggered by the fact that blacks had begun to gain access to political process, to vote in large numbers in Mississippi. And you can go back to the debates in the Legislature and you can find statements there which openly indicate what the purpose was.

Q. Whose statements?

A. Members who were in the Legislature at that time.

Q. Which members?

A. It's been some time since I've looked at the materials so I could not at this point name them.

Q. But you're recanting to this extent, on direct you said it was a fact and now you say it's a tendency?

[75] A. To do what?

Q. Of multi-member districts to keep blacks out of the Legislature?

A. I think what I stated was that the interest in multi-member districts which developed in the 1960's was related to the fear by white politicians that blacks might get elected in significant numbers or in any numbers to political office. The other thing that I'm saying is that there is a general tendency where you have multi-member districts—large multi-member districts—to discourage in the context of Mississippi the election of blacks to political office.

Q. Can you name any politicians who voiced such fears?

A. Not without going back and consulting the record.

Q. And you lived here three years while that was going on and you still cannot—.

A. No, this occurred in a period before I came into the state.

Q. Well, if it occurred before you came into the state how do you know so much about it?

A. Well, I examined the documents; I examined other materials.

Q. What documents or material?

A. Debates of the Legislature, reports which have been made.

[76] Q. Is the reason that you would prefer that blacks be represented by blacks—is the reason for that that white politicians won't give blacks a fair shake?

A. Well, I don't think that it's a matter of my preferring that blacks be elected by blacks. My concern is that the election system which is used be a system which is impartial,

which does not contain a built-in factor which discriminates against a group, whether it's on race or whether it's on some other basis. My feeling is that in Mississippi multi-member districts do discriminate on the basis of race.

Q. But it is somehow just a gut feeling that you have? You haven't been able to articulate any reason [sic] basis for having that feeling, have you?

A. I think you've got a situation in Mississippi where you've got a black population in the state of 37%. It's not an assimilated population; the black population is heavily concentrated in the eastern part of the state, particularly in the river counties and the next echelon of counties next to the river counties. And you've got 174 legislators and there's been one black legislator elected in this state in the twentieth century. And that suggests to me that you've got a system here which discriminates to the disadvantage of black political [77] candidates.

Q. Did you just state that the balance of the black population is in the eastern part of the state?

A. I stated—no. I stated that the eastern part of the state is the area of the state where the largest percentages of blacks live. In other words, you find that blacks tend to be concentrated quite heavily in the eastern part of the state and you move—. I beg your pardon, in the western part of the state, and you move in from the Mississippi River and you get into the mid-part of the state and over to the extreme eastern part of the state, with the exception of a few counties, and the population in the counties in those areas is predominantly white.

Q. Now you taught at Jackson State, didn't you?

A. That's right.

Q. What year?

A. '69 through '70.

Q. And basically your associations and contacts were in the black community, weren't they?

A. No, not entirely.

Q. But you lived and worked and moved in the black community more than in any other community, didn't you?

A. I wouldn't say that. I worked in the black community, yes.

[78] Q. But the balance of every working day spent at Jackson State College was in an environment that was predominantly black, was it?

A. Only while I was working at Jackson State College. I mean I don't—I work at home, I work at other places.

Q. But didn't you tend to take on and assimilate the views of those black students that you taught and black professors that you worked with?

A. Oh, I don't think so. I think I maintain my own views.

Q. Where else did you work in Mississippi?

A. Other than that, subsequently I worked on a consulting basis for the Lawyers' Committee for Civil Rights Under Law.

Q. While you were living in Jackson?

A. That's correct.

Q. How long did you work for the Lawyers' Committee for Civil Rights?

A. Over a two-year period on an ad hoc basis rather than on a continuing basis.

Q. Was that your complete income during that time?

A. My wife was also employed.

Q. Where was she employed?

A. She was employed at Tougaloo College.

Q. What's the racial make-up of Tougaloo College?

[79] A. The student population is predominantly black. The faculty is mixed—probably roughly 50-50%.

Q. It is likewise true that your wife spent more time in the black community than any other?

A. No, I wouldn't say that. She was involved with whites as well as blacks.

Q. You worked with the Lawyers' Committee for Civil Rights Under Law—your work has been basically devoted to furthering black legal and political interests, has it not?

A. I think it's been a concern rather of attempting to do away with discriminatory barriers which operate to the disadvantage of blacks.

By Mr. Ladner: No further questions.

Re-Direct Examination

By Mr. Parker:

Q. What is your race, Mr. Sweeney?

A. I'm white.

Q. What is the predominant race at Shippensburg State College where you're now teaching?

A. White.

Q. Do you have any present connection at all with the Lawyers' Committee for Civil Rights Under Law in a formal capacity?

A. I was asked by the Lawyers' Committee recently to testify [80] in this case, and I'm here in that connection, but other than that, no.

Q. Are you presently employed as a full-time or part-time consultant to the Lawyers' Committee, other than—?

A. Other than in the capacity I've just indicated, no.

Q. The calculation of these floterial districts—counsel on cross examination attempted to characterize these as your own inspirations. Is this your own personal calculation, Mr. Sweeney, or would any informed political scientist or statistician reach the same results in calculating malapportionment in the floterial districts of House Bill 1389 and Senate Bill 2452?

A. Well, I believe that—.

Q. I'm speaking of results now.

A. I think so.

Q. Beg your pardon?

A. Could you re-state the question?

Q. With your calculation of population deviations in the floterial districts, or the results of these calculations, are these your own personal results?

A. I calculated them.

Q. Or would any informed political scientist or informed statistician reach the same result in calculating the population deviations in the floterial districts?

[81] A. Following this method they would achieve this result.

Q. Is your method valid?

A. I believe it is.

Q. Did you bring with you, Mr. Sweeney, maps reflecting the outlines of the proposed—your proposed legislative districts for Hinds County?

A. Yes, I did.

Q. Would you hand them to me, please?

A. I am handing you eight maps which indicate the various house and senate plans in my proposal. In addition there is an ED map for Hinds County and there is a precinct map for the greater Jackson area.

Q. Are these maps simply a visual description of the legislative districts which you've described in narrative form in your plan which is Exhibit No. 2?

A. They are a geographic representation of the plan which I've described, yes. The maps are marked with lines representing the described boundaries of the districts.

BY MR. PARKER: I would like to ask that Plan A for the House be marked as Exhibit 3.

Q. Mr. Sweeney, are these maps properly identified?

A. The clerk has identified each of these maps, and I assume she has done it properly.

[82] [WHEREUPON the maps were received and marked as exhibits to the deposition of Mr. Sweeney as follows:

Map—Plan A for the House, marked as Exhibit 3.
Map—Plan A for the Senate, marked as Exhibit 4.
Map—Plan B for the House, marked as Exhibit 5.
Map—Plan B for the Senate, marked as Exhibit 6.
Map—Census Map of Hinds County, marked as Exhibit 7.
Census ED map—Plan A for the House, marked as Exhibit 8.
Census ED map—Plan A for the Senate, marked as Exhibit 9.
Census ED map—Plan B for the House, marked as Exhibit 10.
Census ED map—Plan B for the Senate, marked as Exhibit 11.
City of Jackson Precinct Map—marked as Exhibit 12.
These exhibits are appended to the original of this deposition.]

BY MR. PARKER: Do you have any objection?

BY MR. ALLAIN: Not as exhibits. We will object at the proper time.

[Examination continues:]

Q. Do these maps reflect the boundaries of the legislative districts as described by your plan?

A. Yes.

Q. And are these maps accurate, to the best of your knowledge?

A. Yes.

[83] BY MR. PARKER: I have no further re-direct.

RE-CROSS EXAMINATION BY MR. LADNER:

Q. A moment ago you testified that in effect any political

scientist would validate your method of handling the floterial districts. Can you in honesty and good conscience speak for any political scientist?

A. I did not state that. I stated that one following this method would come up with the same computations, and that I believed this method was a valid method of computing variances for floterial districts.

Q. Oh, so you meant assuming that they would accept your method they would come up with the same result?

A. That's right.

BY MR. LADNER: No further questions.

BY MR. PARKER: Nothing further.

[DEPOSITION CONCLUDED.]

• • • •

[83(A)] [*Certificate of Deponent* Omitted]

• • • •

[84] [*Certificate of Court Reporter* Omitted]

[Exhibits Omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

PEGGY J. CONNOR, ET AL., PLAINTIFFS, VS. WILLIAM L. WALLER, ET AL., DEFENDANTS.	CIVIL ACTION No. 3830

DEPOSITION OF DR. JAMES W. LOEWEN

Taken By Plaintiffs

[1] *INDEX*

DEPOSITION OF DR. JAMES W. LOEWEN:

	Page
Appearances	2
Direct Examination	3
Reporter's Certificate	61

EXHIBITS TO DR. LOEWEN'S DEPOSITION:

Exhibit 1	4
Exhibit 2	11
Exhibit 3	14
Exhibit 4	14
Exhibit 5	16
Exhibit 6	18
Exhibit 7	25
Exhibit 8	26
Exhibit 9	28
Exhibit 10	33
Exhibit 11	35
Exhibit 12	38
Exhibit 13	38
Exhibit 14	41

[2] *APPEARANCES:*

HONORABLE FRANK R. PARKER
Attorney at Law

Lawyers Committee for Civil Rights Under Law
233 North Farish Street
Jackson, Mississippi 3920I

REPRESENTING PLAINTIFFS.

HONORABLE WILLIAM A. ALLAIN, ESQUIRE
Assistant Attorney General
P. O. Box 220
Jackson, Mississippi 39201

REPRESENTING DEFENDANTS.

BE IT REMEMBERED that the Deposition of Dr. James W. Loewen was taken by the plaintiffs in the above styled and numbered cause at 1:30 P.M., in the law office of the Lawyers Committee for Civil Rights Under Law, 233 North Farish Street, before Mrs. Glenda Ferguson, Court Reporter and Notary Public, pursuant to the following stipulation:

It is stipulated that this Deposition is being taken upon notice duly given, pursuant to the Federal Rules of Civil Procedure, and that all formalities for the taking of the Deposition are waived, except the reading and signing by the witness.

It is further stipulated that all objections except as to the form of the question will be reserved until the time of trial of the cause.

[3] *DR. JAMES W. LOEWEN*

after first having been duly sworn by Mrs. Glenda Ferguson, Notary Public in and for Hinds County, Mississippi, was examined and testified on oath as follows:

DIRECT EXAMINATION

BY MR. PARKER:

Q. State your name and address for the record please, Dr. Loewen.

A. Dr. James W. Loewen, that's L-O-E-W-E-N. My address is 4112 Oak Hill Drive in Jackson.

Q. Where are you currently employed?

A. At Tougaloo College.

Q. In what capacity?

A. I'm Associate Professor of Sociology.

Q. How long have you been employed in the Sociology Department at Tougaloo College?

A. Since 1968.

Q. I'm going to hand you a document which purports to be what Sociologists call a Vita and what lawyers might call a resume and ask if you can identify that?

A. Yes, I prepared it myself.

Q. Does that accurately describe your training, research experience, and teaching experience up to the present time?

A. Yes. Of course, it's in summary form, but yes, it does.

[4] BY MR. PARKER:

I ask that this be admitted as Exhibit 1.

(The said document was marked Exhibit 1, Testimony of Dr. Loewen, and is appended hereto).

EXAMINATION CONTINUING:

Q. How long have you been working in Mississippi, as a Sociologist or as a student of Sociologist [sic], Dr. Loewen?

A. Off and on since 1963, more on than off. I've been in the state virtually every year since '63, and I've lived in the state continuously since '68.

Q. Have you received any educational training in Mississippi?

A. Yes. I was a student for a brief part of my undergraduate experience at Mississippi State University, and as a graduate student, I did a dissertation which involved a considerable amount of research time in Mississippi while a graduate student at Harvard University, and that dissertation has developed into a book, *THE MISSISSIPPI CHINESE: BETWEEN BLACK AND WHITE.*

Q. Could you describe the research work you've done in Mississippi just briefly and the techniques, research techniques, and other techniques that you used in performing that research?

A. O.K. I've done various kinds of research in Political Sociology. For example, I've studied several elections. I've noticed those elections and analyzed them on a county level across the state. I've completed indepth sociological and historical study of the Chinese population in the Delta, [5] which also involved the study of the Delta social structure. I've completed a community study of the town of

Mound Bayou in Bolivar County and in the Bolivar County vicinity, which included a study of Bolivar County politics. Most recently, I and some co-authors have completed a history of Mississippi from the beginning to the present, and even into the future which involved the comprehensive study of the past with politics, economics, social structure and culture. Then, there's been some other minor researches that I've done.

Q. That would be *MISSISSIPPI: CONFLICT AND CHANGE* published in 1974 by Pantheon?

A. Yes.

Q. Your resume also indicates that you've done some work in statistics. Is that right?

A. Yes.

Q. Would you describe briefly the work that you've done in statistics and your training and background in statistics?

A. O.K. As an under-graduate, I had the usual required statistics course related to a Sociology major. In graduate school, I had the required statistics course under, I would say, an internationally known professor, and followed that up with other courses including an independent study course in quantitative methods with Dr. David Armor at Harvard University. I had another course in field methods, and I have taught statistics based on those several courses and on my research development of statistics. I have taught [6] statistics at Millsaps College where I initiated the Statistics and Methods course in the Sociology and Anthropology Department. I've taught it at Tougaloo since 1968. I've taught field methods of social research at Harvard University in the summer of 1969. That would pretty much cover my course work. In terms of research, statistical methods are being utilized both parametric and non-parametric statistics in the book, *MISSISSIPPI: CONFLICT AND CHANGE* in an article on Mississippi politics and social structure which appeared in *THE MISSISSIPPI GEOGRAPHER* and in various of my other articles and books on research.

Q. Have you ever testified in a legal proceeding or court case as an expert witness?

A. Yes, I have.

Q. Would you briefly describe the work and testimony that you performed in court cases as an expert witness?

A. Well, there have been several. I won't cover them all.

For example, in Wilkinson County in about, this would be in early 1969, I testified as a statistician in a case involving jury selection, and I testified as to the statistical likelihood that a given racial ratio would attain on juries and on venires if the juries and venires had been drawn by a random or chance method from an underlying population of registered voters. I have testified on those grounds in a couple of other cases.

Q. Involving juries?

A. Involving jury selection. I've testified as a Political [7] Sociologist in the case involving . . . I must say I'm not sure of the legal names involved in these cases, but the case involving the Democratic Party and what part of the Democratic Party should be recognized as the agent of the National Democratic Party.

Q. Is that Riddell VS. The National Democratic Party?

A. Yes. In that case I testified on some of the same material that I've brought along today, as to voting behavior patterns and party behavior in Mississippi politics. I've testified in Hinds County with regard to jury selection. I've testified . . . well, just a couple of those.

Q. Did you testify in a case involving a challenge to at-large elections in municipalities called Stewart VS. Waller?

A. Yes.

Q. Was your deposition taken?

A. My deposition was taken.

Q. Did you testify in the Hinds County Re-Districting case called Kirksey VS. Hinds County Board of Supervisors?

A. Yes.

Q. In all of those cases, you testified as an expert witness?

A. Yes.

Q. Could you describe for us please, define for us, the statistical term Product-Mono Correlation?

[8] A. O.K. The product-mono correlation coefficient is a technique which sums up in one number whether or not there is a statistical relationship between two variables.

Q. What do you mean by variable?

A. Well, o.k. If, for example, we have a variable like, let's say, the vote for Evers in 1971 when he was running against Waller, that vote is a variable, and if we look at a given unit and of course the most convenient unit would be coun-

ties. There are 82 counties, that's quite a few, that's enough to concern ourselves with. If we look at a given unit, then a given county may have an eleven percent vote for Evers or a thirty-eight percent vote or whatever. That variable vote for Evers in percentage form can vary in accord with some other variable perhaps, and if we look at it, say in contrast to Black percentage of the population, then we have another variable. The percentage Black of the population varies from three or four percent up in the northeastern part of the state to well above seventy percent in certain counties in the Delta or along the Mississippi River. Now the correlation coefficient allows us to sum up the relationship between the two variables. If Blacks, for example, tend to be voting for Evers, then in counties which have a high Black population, we would expect a proportionately higher Evers vote. In counties with a low Black population, we would expect a low or at least in relation to the other counties a lower proportionately [9] Waller, excuse me, Evers vote. The correlation coefficient can go from minus one through zero to plus one.

Q. O.K. What would a minus 1.0 correlation coefficient indicate?

A. Minus 1.0 would be a perfect correlation in a negative direction. To continue with my example, that would mean then without exception as you get a higher Black county in terms of population, you get a lower Evers vote, perfectly negative. A plus one correlation would be a perfect correlation that would be positive without exception as you get a county that's higher in Black vote, I mean Black population, you'd be having a county higher in Evers vote, to continue my example. A correlation coefficient of around zero, let's say minus 1.0, excuse me, minus 1.1 or minus .05 or plus .1, something like that or zero itself. A correlation coefficient around zero means that there is no or very little relationship between the two variables so that as the county would go up in percent black you wouldn't be able to make any particular association of what was happening with the votes.

Q. I asked you to draw a scale for us showing a scale of the product-mono correlation coefficient indicating which ones show a significant relationship and which ones would not.

A. O.K. This sketching is rough, I didn't use a ruler or anything. I indicate minus 1.0 on the left, plus 1.0 on the

right. The correlation coefficient which is called R, the small r, is going to equal some number. It can never be more than 1.0, because [10] 1.0 is perfect. It can never be less than 1.0 because minus 1.0 is perfect but in an inverse or negative direction. If the correlation coefficient, well, it depends on how many cases you haven't solved, but with 82 counties and Social Science being what it is, if the correlation coefficient is in the neighborhood of .5 or perhaps .4 or .6, around in there, then a Social Scientist would tend to say there is a relationship between those variables. In fact, he would more than tend to say it, he would say there is a relationship between those variables, and he could perform further statistical tests to prove it, that that relationship couldn't possibly be due to chance with numbers like 82 counties involved. If the correlation coefficient is in the neighborhood of say .7, .8, .9, it is a very, very strong relationship and rather uncommon in Social Science. It doesn't happen all that often and in that case the Social Scientist or Political Scientist would say there is a very strong relationship between the two variables.

Q. Would that be in either direction?

A. Yes. That would either be minus .8, minus .9, minus .7 or if it were plus .8, plus .9, in that area.

[11] BY MR. PARKER:

I ask that this Diagram be admitted as Exhibit 2.

(The said Diagram was marked Exhibit 2, Testimony of Dr. Loewen, and is appended hereto).

EXAMINATION CONTINUING:

Q. Would you give us the complete technical term that's used to describe this product-mono correlation coefficient in this case?

A. Yes. It's called the Pearson, that's P-E-A-R-S-O-N, the Pearson Product-Mono Correlation Coefficient.

Q. Can you tell me whether or not this is a standard technique used by Sociologists and Statisticians in measuring correlation between variables?

A. Yes. It's probably the most common single measurement of an association between two variables.

Q. Have you made any studies of racial voting patterns in Mississippi?

A. Yes.

Q. For what purpose did you make these studies?

A. Well, partly, I was just intellectually curious. I look into voting studies usually every time in the week or two after an election in November. I went a little further into it on one occasion relating to some of the material I brought with me because I thought I could develop it into an article for *THE MISSISSIPPI GEOGRAPHER* or for some [12] journal and, in fact, I did do that. Also, on other occasions I've studied voting patterns and used other publications.

Q. With regard to the major study that you've done, what data have you used?

A. I got data from the Secretary of State's office, by county, as to the voting behavior, the numbers, the actual numbers of votes for Evers and Waller in the 1971 gubernatorial election and for Humphrey VS. Nixon in the 1968 presidential election. That's what I brought with me today. Then, in my analysis I also looked at the percent Black in the population and those figures I got from the United States census, 1970.

Q. Is the voting date [sic] the same voting date [sic] that appears in the Blue Book published by the Secretary of State?

A. Yes. The Blue Book came out later, of course, but I checked a couple of the counties just to be sure the data was the same and it was, as I would expect because it was in the Secretary of State's office.

Q. Have you drawn and compiled data on maps showing the study that you performed?

A. Yes, I have.

Q. Could you show us Map 1?

A. Yes. I'll keep the original and give you the copy (gives map).

[13] Q. Is Map 1 a map you prepared using data that you described to us?

A. Yes, it is. It shows the Black population in 1970 according to the 1970 census population, and I have shaded it into five shade categories. Would you like for me to describe how I did that?

Q. Yes.

A. I used the principle called Equal *N* Shading which is the shading principle least biased. In fact, it essentially cannot be biased. That is, I arranged the counties in order from the least Black to the most Black and I then picked

my percentage cutting points for the categories so that about the same number of counties would be shaded in each category. In other words, there's approximately one-fifth of 82 or approximately 16 counties that are shaded black, approximately 16 counties that are shaded striped, that are shaded gray, dotted and white, and that way there is no way that I could personally bias the results in terms of what the map looked like. I'm giving the same weight to each shade category. So, in other words, I then determined what color each category should have in some rational manner. In this case, the more heavily shaded the county, the higher the Black population.

Q. These shading categories show the percentage of the total population that's Black?

[14] A. That's right. So, for example, Desoto County up in the upper lefthand corner is somewhere between 33 and 43 percent Black.

Q. And the counties that appear all black on this map are 60% Black and over?

A. Right.

Q. Is this a copy of Map 1?

A. Yes, it is.

Q. Do you want to keep the originals?

A. Yes.

BY MR. PARKER:

I ask that Map 1 be admitted as Exhibit 3.

(The said Map 1 was marked Exhibit 3, Testimony of Dr. Loewen, and is appended hereto).

EXAMINATION CONTINUING:

Q. Have you prepared Map 2?

A. Yes, I have. (gives map)

Q. Is this a copy?

A. Yes, it is.

Q. Did you prepare Map 2?

A. Yes, I prepared Map 2.

BY MR. PARKER:

I ask that Map 2 be admitted as Exhibit 4, Testimony of Dr. Loewen, and is appended hereto.

[15] Q. Do you have a copy of Map 2 before you?

A. Yes.

Q. Would you describe what is on Map 2?

A. Map 2 is entitled *Percentage For Evers, 1971.* Again, in terms of the shading, I used the same principle, the same categories from white to black with stripes and so on. Equal unshading meant, again, that I would have approximately 16 counties shaded white, approximately 16 counties shaded dotted and so on, again, so that each category gets the same weight on the map. Just for example, you can look at Desoto County and see that it is between 11 and 18 percent for Evers in the 1971 election. The counties shaded black were the heaviest counties for Evers and they range from 34% on up.

Q. This is the percentage total county vote for Evers in the 1971 General Election?

A. That's correct.

Q. Just so that we can get the Map Exhibits in, have you prepared a third map?

A. Yes, Map 3.

Q. Is this a copy of Map 3 that you've made?

A. Yes, it is.

Q. Did you prepare Map 3?

[16] A. I prepared it.

Q. Using data from election returns?

A. That's right.

BY MR. PARKER:

I ask that Map 3 be admitted as Exhibit 5, Testimony of Dr. Loewen, and is appended hereto.)

EXAMINATION CONTINUING:

Q. Did you use the same shading principles as you used in the other maps?

A. Yes, I did. The colors or the shadings are the same and I used the equal N principle again and this map shows percentage for Humphrey in the presidential race of 1968.

Q. What process or technique did you use to establish the correlation between the variables given on Map 1, Map 2 and Map 3?

A. First of all, of course, I just visually looked at the maps, and this is called ecological analysis, and it gives you a chance to see visually what's going on. In addition to the percentage for each county, you can see the actual physical or aerial pattern of votes over the states, and as you

look at the three maps you notice that they look very, very similar. In fact, this is quite remarkably similar. [17] I can remember mappings of Mississippi that V.O.C. did in southern politics in order to show similarity and often where they show similarity, they are not as close a similarity as these maps. For example, look at East Mississippi and you see that Noxubee County is shaded black in every case, that the county directly above it is shaded gray or close to gray, in one case dotted. Clay County is shaded striped in every case. There's just a remarkable similarity, and when there isn't a similarity . . . when there isn't an identity the counties are out of order only by one shade category. For example, you might note that Marshall County on the first map is shaded black and the second map is shaded striped and the third map is shaded black, and then you realize the striped is the closest thing to black. So, even when there seems to be a difference, it is a slight difference. The maps simply look very, very similar. I then went ahead and based on the data itself which I have in the form of a table . . .

Q. Could we mark that as Exhibit 6. Is this the table you are referring to?

A. Yes.

Q. Did you prepare this table?

A. Yes.

[18] BY MR. PARKER:

I ask that the Table prepared by Dr. Loewen be admitted as Exhibit 6.

(The said Table was marked Exhibit 6, Testimony of Dr. Loewen, and is appended hereto).

EXAMINATION CONTINUING:

A. Based on the actual numbers in the table. . . .

Q. Tell us what the Table indicated on Exhibit 6 is.

A. O.K. It is simply a listing of the data for the three variables in percentage form. Again, the percent Black comes from the 1970 census. The percent Humphrey and percent Evers comes from the election returns as obtained from the Secretary of State's Office.

Q. You've simply computed the percentages in each case?

A. Right. In other words, I took the percent Black, the Adams County population for non-white and divided by

the total population. It is true, of course, in Mississippi that the overwhelming number of non-whites as listed in the census is Black so I went ahead and used the term Black even though there are a few others listed.

Q. How did you use this data in Exhibit 6?

A. First of all, this data is the data that was mapped on the three maps. Secondly, this data was the data used for the correlation coefficient. On the bottom of Map 1, I listed the two correlations that Map 1 has with the other two maps. [19] Map 1 correlates with Map 2.

Q. Map 2 is what?

A. Map 1 is Black population and Map 2 is percentage for Evers, and the correlation between those two maps is in the Pearson Product-Mono Correlation Coefficient. That correlation coefficient is .93.

Q. How statistically significant, if at all, is that correlation?

A. That's very, very high. Social Scientists rarely find correlation coefficients that high. So, that means, in other words, if you knew the Black population in 1970, you could predict how a county would come out compared to other counties in 1971 in its vote for Evers with very high accuracy. The relationship between those two variables is very high. It's almost perfect. After all, it can't get much higher than .93. Of course, that perfection or near perfection is shown by the maps visually, but it is shown by a statistical number by the correlation coefficient .93. Then I went on to compute the same correlation coefficient between Map 1 and Map 3. Map 1 being again Black population, Map 3 being percentage for Humphrey. We find an almost equally high correlation coefficient here showing that there is a very great association between Black population in a county and percentage of the vote for Humphrey, in 1968.

[20] Q. But not as high as the vote for Evers?

A. Not quite as high a correlation, but you have to realize that .93 and .91 are virtually as high. After all, we're talking about a correlation coefficient which would be considered very high as long as it was considered above .70 or .80, in that area.

Q. What is the significance of the use of the Evers vote? Why did you select the vote for Evers?

A. Well, I was interested to see whether or not there was

what we would call racially polarized voting in Mississippi. Of course, as everyone knows who reads the newspaper, Charles Evers in 1971 was the first major state-wide contest by a Black candidate since 1890.

Q. Dr. Loewen, is there a formula or computer process that you used to compare these percentages to arrive at the correlation coefficient?

A. I actually did it on a calculator, not on a computer. Yes, there is a formula. It's a fairly elaborate formula. I haven't mentioned the third correlation coefficient. Finally, just to be complete about it, I checked the correlation between Map 2 and Map 3. That's between the percentage for Evers in 1971 and the percentage for Humphrey in 1968. I found that that correlation coefficient also was very high, .94. That's the only correlation coefficient that you can do. If you want to look at Map 3 and compare it to Map 1, why it's the same correlation as that indicated between Map 1 and Map 3.

[21] Q. Is this a statistical technique or method that any professional expert statistician would use in analyzing this statement?

A. Yes, it is.

Q. You were describing the significance of the Evers race.

A. Right, and I was saying if you wanted to see whether or not Mississippi voting was racially polarized, it would be a good race to pick, because it was the most important and, in fact, the first real state-wide campaign by a Black candidate for office, for a state-wide office, since the days of reconstruction, in the previous century, so when I examined it I concluded, of course, from these maps and from the correlation coefficient that there is or was in that election racial voting, that in light counties, the vote for Evers is miniscule and Whites were voting for Waller with a few votes for Brady who was a minor third candidate and in the counties with a higher Black population, there was a much higher vote for Evers which correlated perfectly, almost perfectly.

Q. What is the significance of using the Humphrey campaign?

A. I wanted to determine if the National Democrats as indicated by their candidate in 1968 were getting support on racial lines, and again the correlation in this case, Map 1 and Map 3, .91, is again is very, very high so we conclude

that the National Democratic group on the whole was a Black vote.

Q. Was Humphrey supported by a racial group in Mississippi?

A. He was supported by the Loyalist Democrats. Some people would argue that is a racial group, I wouldn't.

[22] Racially speaking, was Humphrey supported by any particular group of voters?

A. Yes, by Black voters.

Q. Humphrey was the presidential candidate in 1968 favored by the Black voters?

A. Yes.

Q. In a sense, he was the choice of the Black voters?

A. That's correct.

Q. Evers was the gubernatorial choice by Blacks?

A. That's correct.

Q. Is your study affected or strengthened or weakened in any way by using figures from both 1968 and 1971?

A. It's strengthened in that it shows the same pattern as persisting in time in the correlation between '68 and '71 is the highest of all, .94. Incidentally, I didn't bring it with me but I have done a similar map for the McGovern vote in 1972, and it shows the same pattern and an equally high, or I don't remember the exact number, but it is around .9 correlation coefficient.

Q. You've given us in technical language the correlation coefficients showing the relationship among the three variables. Can you tell us in less technical language what conclusions you've drawn from this analysis?

A. My conclusion is that Blacks are voting for either a Black candidate or a candidate they believe to be identified with their interests and the Whites are doing the same thing, voting [23] for either a White candidate or a candidate they believe to be identified with their interests. Of course, I'm not stating that every Black voted a certain way or that every White voted a certain way, but there is a tremendous relationship between votes and race. In other words, the state is voting along racial lines at the present time.

Q. Does this include Whites as well as Blacks?

A. Yes. In fact, some of these counties . . . we have no counties that are 90 and 95 percent Black. We do have counties that are 90 or 95 percent White, and when you look into the overwhelmingly White counties you see that they fit into the pattern perfectly. In other words, Whites are

very definitely voting for White candidates or voting against or for candidates other than Hubert Humphrey or other than McGovern, and other than Charles Evers, of course.

Q. What you're saying is that in Mississippi, there is racial block voting by both Whites and Blacks?

A. That's correct.

Q. Is this constant or inconstant of the time?

A. Ever since the 1965 Voting Rights Act began to take effect it's been constant. There was no or very little Black voting . . . no significant Black voting before 1965. But after the Voting Rights Act increased the Black vote, then you began to see this kind of behavior. It's been constant in every election I've looked at since '67.

[24] Q. From this data can you tell us whether or not Black candidates and voters would be able to or likely to form effective political coalition with White candidates or White voters in the support of Black candidates?

A. It looks doubtful because the vote seems to be as we've been saying polarized on racial lines. It doesn't seem likely that a candidate could easily represent a significant group of Blacks and a significant group of Whites at the same time and thus win a majority. It seems as if the candidate who . . . let's say if we had a White candidate who was favored by Blacks, as was Humphrey, such a candidate would draw a minuscule White vote as did Humphrey. Or, it seems as if we have a candidate who was Black, as Evers, then that candidate would draw a minuscule White vote, as he did.

Q. Have you done studies, Dr. Loewen, on the relationship in Mississippi between total population figures and voting age population figures?

A. Yes, I have.

Q. For what counties have you performed that study?

A. Several. I don't remember them all. I brought Hinds County. I've also done this kind of analysis in Madison County and I believe I've done it in the state as a whole. The only county I brought was Hinds County.

Q. This next exhibit is part of the record, Kirksey VS. Hinds County Board of Supervisors. These are the figures given in answers to the interrogatories by the Board of Supervisors [25] indicating the racial composition in terms of total population of the 1969 Plan Districts and the 1973 Plan Districts. This is part of the court record and is an exhibit in the case of Henry J. Kirksey VS. The Board of

Supervisors of Hinds County, Mississippi. I'd like to hand you a copy of that and ask that it be marked as an exhibit to your deposition.

BY MR. PARKER:

I ask that Plan Districts for 1969 and 1973 be admitted as Exhibit 7.

(The said Plan Districts for 1969 and 1973 was marked Exhibit 7, Testimony of Dr. Loewen, and is appended hereto.)

EXAMINATION CONTINUING:

Q. I believe you testified in the Hinds County case . . . the Hinds County Redistricting case, Dr. Loewen?

A. Yes.

Q. Based on the total population figures did I in that case ask you to do a calculation of the voting age population, White and Black, for each of the proposed districts?

A. Yes, you did.

Q. I'm going to hand you this document and ask if you can identify that?

A. Yes, that's the calculation that I performed. This is my work.

Q. Did you type it?

A. Yes, I typed it.

[26] BY MR. PARKER:

I ask that the Voting Age Population be admitted as Exhibit 8.

(The said Voting Age Population was marked Exhibit 8, Testimony of Dr. Loewen, and is appended hereto.)

EXAMINATION CONTINUING:

Q. According to the census figures, ten percent of the Black population in the state of Mississippi lives in Hinds County and perhaps an equivalent percentage of the White population in the state of Mississippi lives in Hinds County. What did you find in your analysis of the census statistics on the relationship between total population by race and voting age population by race for Hinds County, Mississippi?

A. By supervisor's district, for example, by proposed district we noticed that, according to this exhibit you handed me, the Black. . . .

Q. Could you identify that; what number is that?

A. Exhibit 7. According to Exhibit 7, in District 1 and this is data supplied by the Supervisors from the United States Bureau of Census, in District 1 the non-white percentage is 29.5%. When I calculated the Voting Age Population as shown by Exhibit 8 for District 1, the Voting Age Population was 25.3% Black. Thus, we see the overall population ratio of 29.5% when you look at just voting age population shrinks to 25.3%.

[27] Q. Similarly in District 2 we have a Black population of 53.4% which would appear to be a majority. When you then look at the voting age population that Black population shrinks as a percentage as a whole to 48.0%. District 3, the same thing happens. You go from 27.7% to 23.6%. District 4, you go from 32.0% down to 27.5%. And, finally, District 5, it appears there is a Black majority. In District 5, the figures are 54.0% non-White in the entire population. When you look at the voting age population, those age 18 and over, the percentage non-White drops to 48.6%.

Q. Did you compare the total county population according to census figures the percentage of the total white county population that is of voting age and the black county population that is of voting age.

A. Yes.

Q. What did you find?

A. In the white population 67.9% is of voting age. In the black population, 54.8% is of voting age.

Q. So there is a lower percentage of black voting age persons in the total black population?

A. That's correct.

Q. Let me hand you Exhibit 9 and ask if you can identify that?

A. Yes, I prepared these. This is my work, personally. These are called Age and Sex Population Pyramids and there is one for the United States as a whole, one for the Black population [28] of Hinds County and another for the White population of Hinds County.

BY MR. PARKER:

I ask that the Age & Sex Population Pyramids be admitted as Exhibit 9.

(The said Pyramids exhibit was marked Exhibit 9, Testimony of Dr. Loewen, and is appended hereto.)

EXAMINATION CONTINUING:

Q. What is the source of data for these Age and Sex Population Pyramids?

A. All of this data comes directly from the 1970 Census of the population.

Q. Did you prepare these statements yourself?

A. Yes.

Q. Can you tell us whether or not these tables provide an explanation for your finding that there is a smaller percentage of voting age persons in the total Black population?

A. Yes, they do.

Q. Could you give us that explanation?

A. First of all, let me describe what the tables are, and how they are constructed, and we can look at the United States one on the left for that description. Females are placed on the left, males are placed on the right. The scale is to be read in percentage to the total population. [29] This means, in other words, that I took the number of females under the age of 5 in the United States and divided by the population of the United States to find out what percentage of the United States was composed of females under the age of 5. I found that percentage to be slightly greater than 4%. I did the same thing for males and then I did the same thing for other age groups. If the United States had a steady birth rate, you would expect this graph to be in the form of a pyramid and that's why it's called Age & Sex Population Pyramid. This is a standard demographic technique used by sociologists or demographers. There are . . . this graph does in fact form something of a study pyramid with three exceptions. I'd like briefly to describe those exceptions. The first is that at the very top the bar is longer than you would expect. It does not reach a point and, of course, that's because the top bar does not represent a five-year period. All the other bars do represent five-year periods. The top bar because there's fewer and fewer people as you go from 75 to 79, 80 to 84 and so on, those people have been lumped together in one bar and thus the top bar is slightly longer because of the fact that it simply represents a number of categories lumped together. Otherwise, it's no real exception. Secondly, there's what we might call a wasp waist or an indentation in the area of 30 to 34 and 35 to 39. This represents the drastic decline in the birth rate that took place 30 to 39 years before 1970,

namely during the Great Depression. [30] So that's an indentation caused by the decline in birth rates because of the particular event. Finally, down at the bottom in the two bars under 10, particularly the bar under 5 we see again an indentation there and that's because, as everyone knows, the birth rate in the United States has been in another drastic decline over the past six, seven or eight years and that decline is showing in a scarcity of children, under 5, and 5 to 9. Otherwise, the graph does have to go smoothly towards the point at the top.

Q. How does the Age & Sex Population Pyramid for the United States compare with whites in Hinds County?

A. The Hinds County white pyramid is pretty similar. You can just see that visually. It's similar to the United States pyramid as a whole. It doesn't show any drastic differences. That shows in terms of migration which lies behind this table that the Hinds County white population has not been seriously affected by in-migration or out-migration. Whatever migration there is, it is roughly balanced. There is no age group particularly that is leaving the county.

Q. The percentage of whites, male and female, in the population say over age 19 is generally the same as that for the United States?

A. Right.

Q. How does the Age & Sex Population Pyramid for the United States and for whites in Hinds County compare with the age and sex population pyramid for blacks in Hinds County?

[31] A. Immediately looking upon it you can see that the bars are much longer down at the bottom under the age of 19. There is a much higher percentage of children than you would expect. When you look directly above, you see that between 15 and 19 years old from that graph or bar to the next highest bar there is a quite large indentation, much larger than any indentation on the United States graph or on the Hinds County White graph. That is to say then there is a large number of people who five years earlier had been in the county age 15 to 19, but by the time the census came around in 1970 and they would have been age 20 to 24 they had left the county. This is particularly true on the male side, and you notice that the male indentation is even greater than the female indentation. Then, if you compare age 20

to 24 graph or bar with the next bar up, 25 to 29, you see another jump, another decrease. So again, a large number of people in this age group are leaving the county. Finally, when you look in the area, say age 25 to 29, and on up to perhaps 50 to 54, you see very, very few people. The bars are just systematically shorter, particularly on the male side, than they are on the United States Pyramid or Hinds County white population pyramid.

[32] Q. As a Sociologist who has studied social structure and history in Mississippi, what is the explanation for this substantial decrease in the Black population above the age of 15 to 19?

A. There has been a large migration of Black Mississippians, in this case, Black Hinds Countians, to the north to places like Chicago, smaller towns in Illinois, St. Louis, to some extent to Memphis, but primarily to the North. That migration began a long time ago around 1919 or 1920. It is continuing. Census experts predicted it would slow down during the 1970's, but they were surprised during the late 60's and 70's. They were surprised by the 1970 census which showed that the migration was continuing. This migration is particularly of young adults, especially of males, but to a considerable extent, also of females. It is happening, due to the best analysis, due to a lack of economic opportunity and a lack of social rights or social opportunity. People don't usually leave unless they feel the area they're going to offers them more opportunity than the area they are in. That's what is apparently happening. I might add that although these are for Hinds County, the age and sex population pyramid for Blacks in most other counties would be even more distorted and show even a higher rate of migration.

Q. How typical is the Hinds County example?

A. If anything, it under-represents the migration that's going on. I do have the Madison County charts with me.

[33] BY MR. PARKER:

I ask that this Chart be marked Exhibit 10.

(The said Chart was marked Exhibit 10, Testimony of Dr. Loewen, and is appended hereto.)

EXAMINATION CONTINUING:

Q. Let me have your Exhibit 10 and ask if you can identify that?

A. Yes, this is my work. I prepared these and these are the Age and Sex Population Pyramids for Blacks in Madison County and again for the United States.

Q. Did you use the same technique in preparing these Age & Sex Population Pyramids as you did in the Hinds County case?

A. Yes.

Q. Can you describe for us the significance of the shape of the Madison County Age & Sex Population Pyramid for Blacks?

A. Yes. Again you see a remarkable number of children. The bars for under 5, 5 to 9 and 10 to 14, and 15 to 19 are very long. They are longer than the corresponding bars for the United States population. Then, when you move from the 15 to 19 year olds, to the 20 to 24 year olds, you see a remarkable drop. On the male side, for example, the bar for 15 to 19 compared to 20 to 24 . . . when you move from 15 to 19, to 20 to 24 the bars are cut almost in half, and when you move up one more notch to the age 25 to 29 the bar is again almost cut in half showing a tremendous migration of young adults, particularly young male adults. The shortage of young male adults is evident from 25 to 29 [34] on up to 55 or so. The bars for young adults, particularly males, but also females, from age 25 to 55, are much shorter than the corresponding bars for the United States population as a whole.

Q. On the basis of this analysis, can you tell me whether if we were to measure Black voting strength for voting age Blacks total population figures would be a reliable method to use or should other methods be used in measuring Black voting strength?

A. Total population would be a bad method because the Black population in Mississippi counties is of very different age groups than the white population. Just as we saw in the Hinds County case, total population might show Blacks to be say 50% when, in fact, of the voting age population Blacks might be 45% and might even be as low as 40%, depending on the county.

Q. In the Hinds County case, Dr. Loewen, did you also analyze the voting age population by race and the number of persons registered to vote by this?

A. Yes.

Q. What statistics did you use?

A. The voting age population was based on the census. The registered voters by race was based on estimates from the Institute of Politics in Mississippi.

Q. Why didn't you use official voter registration statistics by race from the Circuit Clerk's Office or from the Secretary of State's office?

[35] A. Well, I'm not aware if they are available. The last time I attempted to inquire about registration by race, the Hinds County officials told me that they do not keep records or make records available of voter registration by race. The Secretary of State certainly doesn't have any for each county.

Q. Do you know of any other source of voter registration statistics by race other than the Institute of Politics at Millsaps College?

A. No. The Institute of Politics' figures are those commonly used by commentators or Political Scientists in Mississippi.

Q. Do you have those statistics with you?

A. Yes, I do. I have calculated the estimated registration in Hinds County for each of the new proposed Supervisor's Districts.

Q. Is this a copy?

A. Yes, that is a copy.

BY MR. PARKER:

I ask that the Voting Age Population, Supervisor's Districts, Hinds County, be admitted as Exhibit 11.

(The said V.A.P. was marked Exhibit 11, Testimony of Dr. Loewen, and is appended hereto.)

[36] EXAMINATION CONTINUING:

Q. What does Exhibit 11 show in terms of relationship in voting age population and registration for Hinds County proposed Supervisor's Districts?

A. It will be remembered that this is the same exhibit as Exhibit 8, I believe. It is the same as Exhibit 8 with the addition of the estimated registration figures. To calculate these, I simply used the Institute of Politics' figures for estimated white registration and black registration in Hinds County and applied them to the voting age population of the county. When I did this, I found by Supervisor's Districts, proposed Supervisor's Districts, in District 1, for in-

stance, where the black population in the voting age was 25.3%, the estimated black registered voters was 20.7% of the whole. Similarly, in District 2 where blacks made up 48% of the total voting age population, they make up only an estimated 41.7% of the whole registration. In District 3, the 23.6% of the population—voting age population—becomes only 19.3% of the registered voters. District 4, the 27.5% of the registered voters . . . excuse me, the 27.5% of the voting age population becomes only 22.7% of the registered voters. In District 5 where you had a 48.6% black population ratio, among voting age population, we find that becomes 42.2% of the registered voters being black, so there's a drop of somewhere in the neighborhood of 4, 5, 6, 7 percent.

[37] Q. Here's Exhibit 7 which is the total population for each of the proposed districts as based on United States Census data. You have the estimated voter registration by race. In terms of percentage, what did you find to be the gap or disparity between total population and registration. How many percentage points on the average?

A. It varied from about 10% to slightly higher, throughout the state.

Q. Ten percentage points?

A. Yes. In District 5, for example, where you have a 54% black population in the total population, you have only 42.2% in the registered voters. That would be a drop of about 12%. I might add that in other counties you get a similar drop depending on the black ratio and population as a whole. You could always assume that the percentage of registered voters who are black will be somewhere between 5 and 15 percent below the overall population that's black.

Q. Let me hand you this document which is entitled *IOP . . . In the Public Interest.* Are these the voter registration figures that you used in your calculations?

A. Just a minute. In order for me to conclude that, I'm going to have to do a multiplication. It will take me a minute. Yes, they are. The figures come up with the same figures that I used, so they are from this . . . I remember this publication, but I just wanted to check it [38] by doing a calculation.

Q. I ask that this be marked as an exhibit to your deposition.

BY MR. PARKER:

I ask that the I.O.P. be admitted as Exhibit 12.

(The said I.O.P. was marked Exhibit 12, Testimony of Dr. Loewen, and is appended hereto.)

EXAMINATION CONTINUING:

Q. Let me hand you another document which is entitled *Figure 7, White and Black Incomes, 1970.* Can you identify that?

A. Yes. I prepared this chart before on numerous occasions and this looks like a preparation of mine for the article. It's certainly my work. I prepared it for classes and for publication.

Q. Let me ask you to compare the figure on page 292 of your book with the exhibit which I just handed you.

A. Yes. They are the same. That's a preparation I did for the publication *Mississippi Conflict.*

BY MR. PARKER:

I ask that Figure 7, White & Black Incomes, 1970, be admitted as Exhibit 13.

(The said Figure 7 was marked Exhibit 13, Testimony of Dr. Loewen, and is appended hereto.)

[39] EXAMINATION CONTINUING:

Q. Let me hand you Exhibit 13, Dr. Loewen, and ask you to identify it and tell us what it is.

A. That's a simple bar graph showing the relationship of black incomes and white incomes, according to the data given by the United States Census of Population for 1970. Black families are shown by a black line which in the Xeroxing, comes out kind of black, and the white families are shown by white bars. For example, if we look at the category below $1000, we find, if you read it correctly, that about 14% of all black families, somewhere around 13 to 14 percent, have incomes as a family below $1000. Among whites, in the neighborhood of 4% have incomes below $1000. Similarly, as we get over in the category of $10,000, there we see that of all black families, approximately 6% have incomes over $10,000. Of all white families, 31 or 32 percent have incomes over $10,000.

Q. That's for Mississippi as a whole?

A. That's for the state of Mississippi.

Q. What conclusions or generalizations can you draw from the statistics that you prepared and illustrated on this graph?

A. There's quite a striking difference. If you attempted, for example, to....

Q. Let me stop you there. What is a striking difference?

[40] A. There's a striking difference in the black incomes, the distribution of black incomes, and the distribution of white incomes. Black families are strikingly poorer. If you attempted to draw a line just covering the points at the top of each black bar, this line would show that the bulk of the black population is making less than $4000 a year family income. For example, 13% are below a thousand dollars. I know that 20% are between one thousand dollars and $1999. Another perhaps 16% are in the $2000 bracket. So, you can readily see that half, well over half of the black population, is making less than $4000. On the other hand the bulk of the white population is somewhere else on this graph. It's over on the right hand end, so if you attempted to draw a line connecting the tops of the white bars, that line would rise systematically as you went towards the richer income categories, so that a majority of the white population is making more than $7000. There is a dramatic difference then in the incomes between black families in Mississippi and white families. Of course, there is some overlap. That's also shown. But, on the whole, there is a tremendous difference.

Q. Is this a bar graph that you prepared?

A. Yes.

Q. Did you prepare this for this lawsuit or for some other purpose?

[41] A. No. I have used it in class and to show how to make bar graphs when preparing statistics. I have prepared it for publication. I did not prepare it for today.

Q. I ask that this be admitted as an exhibit to this deposition.

(Exhibit 13 already entered as part of this deposition, page 38.)

EXAMINATION CONTINUING:

Q. Have you done a more detailed analysis of the social

and economic position of blacks and whites in Hinds County, Mississippi?

A. Yes, I have.

Q. Let me hand you a document and see if you can identify that.

A. Yes. That's a two-page comparison of some basic social and economic data coming from the 1970 Census by race for Hinds County. I prepared it and I typed it.

Q. Was this document made an exhibit in your testimony Kirksey VS. Hinds County Board of Supervisors and admitted as evidence in that case?

A. Yes, it was.

Q. I ask that this be marked and made an exhibit.

BY MR. PARKER:

I ask that the Comparison of Basic Socioeconomic Position be admitted as Exhibit 14.

(The said Comparison was marked Exhibit 14, Testimony of Dr. Loewen, and is appended hereto.)

[42] EXAMINATION CONTINUING:

Q. I don't think we need to ask you to narrate what that data shows. Let me ask you some questions about Madison County, Dr. Loewen. Would you describe for us your experience in politics and political organizing and voter registration and any studies you've done in Madison County and your knowledge of the present situation in Madison County?

A. I have participated as a poll watcher and as an organizer and trainer of poll watchers in Madison County on three separate occasions. I have also assisted in campaign organizing on one occasion. I have done studies of results. For example, in the election of 1972 which was for election commissioners, among other things, we had poll watchers who were reporting and keeping track of the number of people by race at every pollman machine. Madison County uses voting machines. At every voting machine, at every polling place in the county. We therefore knew how many blacks had voted on each machine, how many whites had voted on each machine. We also kept track, when the votes were counted, of how many votes were cast on that machine for which candidate. I did an analysis of that election. Would you like for me to pursue that?

Q. Yes. What were the results of that study?

A. We found that on machines and in precincts that, even

going [43] down to a machine level, on machines where any whites had voted or predominantly whites had voted that the white candidates for election commissioner of which there were five received about as many votes as there were white people going to the machine. For those machines or polling places where there were only white people going to the machines we therefore were able to prove or show that white people were voting virtually exclusively for white candidates. There would be no more than two or three votes for anyone else. On machines that had overwhelmingly or predominantly black voters, we found that black candidates got the majority of the votes. On machines where blacks were the majority of people entering the polling machine, entering the booth, we found that black candidates got a majority of the votes. There was some slight amount of black cross-over for white candidates. There was virtually no white cross-over for black candidates.

Q. Does this data tend to confirm or contradict your county-wide study of black vote?

A. It confirms it and it nails it down by looking at individual precincts and individual machines. The Madison County, like the state, was voting along racial lines.

Q. Are there any black population concentrations in Madison County?

A. Yes.

Q. Where does the majority of the blacks in Madison County live?

A. The majority lives in Canton and in those parts of the county [44] north of Canton.

Q. What Supervisor's Districts?

A. Supervisor's Districts 4 & 5 have heavy black majorities. District 3 which is Canton itself and some environs has a small black voting age population majority. Excuse me, that's not District 3, that's District 1.

Q. Districts 1, 4 & 5 are majority black districts?

A. Right. Districts 2 & 3 which are towards the southern parts of the county—Madison, Ridgeland, that area, Flora—have white voting majorities.

Q. Are there any black elected officials in Hinds County or have there been any black elected officials in Hinds County?

A. Hinds County?

Q. Madison County.

A. Yes, there are a few.

Q. What districts and what offices?

A. In Districts 4 & 5 there are constables, JPs, there was a supervisor. There are two school board members, Beat 4 and Beat 5. There also once was a voting election commission member who was black from Beat 1.

Q. That's county-wide?

A. Correct.

Q. Was that person elected by county-wide voting majority, or could you describe the circumstances in which a person was elected to county-wide office or to the county election commission?

[45] A. She was elected at a time before the Evers vote when the white turnout was very low because no black had won county-wide office. She won by a couple hundred votes and became one black member on the five member voting election. I mean voting commission.

Q. On the county board of election commissioners?

A. Election commissioners. She was one of the candidates in the 1972 election, as I was describing.

Q. For county-wide office?

A. For county-wide office of election commissioner. She lost along with the other two black candidates for election commissioner. In 1972 the whites in the county organized more effectively to vote against black candidates for election commissioner, and all three black candidates were defeated.

Q. Were there black candidates for county-wide office in the 1971 general election?

A. Yes, there were.

Q. What was the result of their campaign efforts?

A. Well, they all lost. They carried . . . in some cases, they carried black beats or precincts but they lost county-wide by a thousand or more votes, plurality.

Q. Can you tell us whether or not there is a black county-wide voting majority in Madison County at the present time?

A. Well, not effectively. Blacks have not won any county-wide office with the exception of this one time that I mentioned [46] when an election commissioner, more or less, sneaked through. In the recent vote for election commissioner they didn't win any and in the votes in 1971 they won no county-wide office. The voting age population shows a

slight black majority in the town, but it has not been translated into black political majority because of the gap between voting age population and registration and because of social economic circumstances which make it more difficult for blacks to mobilize politically than it is for whites.

Q. What is the gap between black voting age population and black registration? Can you describe whether or not there is a gap and what the reason is for that gap?

A. There is a gap. In percentage points, I don't remember how big a gap in Madison County. I'm sure that the registration statistics for blacks would be lower than the voting age population compared to whites. I don't remember exactly how much of a percentage gap there is.

Q. Have you yourself participated in a voter registration drive to help register more blacks in Madison County?

A. Yes, I have.

Q. When did you do that?

A. 19 . . . I believe I've done it twice, in the Fall of 1971 and early Fall of 1972.

Q. Based on your experience with this voter registration drive, can you give us an explanation as to why black registration is disproportionately lower in Madison County?

[47] A. Yes. There's a lot of causes. For example, the registrar, Mr. Foote Campbell, is considered to be a strong racist by the black population. There are stories of his calling blacks nigger, of his putting them down for them not having jobs, of his refusing to assist them with the form and many of these stories I have heard myself from the people who experienced them. Of his closing the office at three p.m., because there were blacks waiting in line when the office is supposed to be open beyond four. The result of that is that many blacks feel that it is a demeaning or possibly humiliating experience to go down there and deal with him, so they're shy and afraid to go and they don't go. Beyond that, there are some social economic causes going on, that are similar to the causes in Exhibit 14. There's a tremendous disparity between black income in Madison County, greater even than for Hinds County. The Hinds County data in Exhibit 14 shows that among occupations blacks are predominantly in what sociologists or economists would call blue collar positions. Whites are predominantly in white collar positions. The big difference between white collar and blue collar is, although often or usually a differ-

ence in income, the great difference is that a white collar person is called salaried and has some control over his own time and can take off at, let's say, 10:30 and go vote and come back at 11:00 as long as he's got the office covered or has someone to take over his position wherever he's working. A blue collar person is [48] on wages, punches in on a time clock and usually has much less control over his own life in the form of time, and cannot take off from the assembly line or from the construction job or whatever blue collar job he's in, he cannot take off from 10:30 to 11:00 or whenever; thus, it is much more difficult for blacks to get to register, to get to the polls on election day. You get a tremendous pile-up in Madison County of black voters at 5:30 in the evening. You get lines hundreds of people long at the West Ward in Canton. This deters people from voting, whereas in the eastern part of Canton, there are similar numbers involved in voting in white wards, but there's no pile-up because whites can come in all day long to vote as they get the opportunity from their home responsibilities or from their job responsibilities. All of these kinds of things—these social and economic causes—make it more difficult for blacks to vote and they add up to a subtle but very significant erosion of the black political potential, in Madison County, or in other counties.

Q. Let me give you some names of persons who purport to be residents of Madison County, and let me ask you if you know them or can identify them according to their race. Leslie Johnson?

A. Yes. He is black.

Q. Do you know Leslie Johnson?

A. Yes. I know him personally. He lives in Canton.

[49] Q. Was he a candidate for a position?

A. He has been.

Q. James Christopher Anderson?

A. Yes.

Q. You know James Christopher Anderson?

A. Yes, I do.

Q. What race is he?

A. He is black.

Q. He lives in Madison County?

A. He lives in Madison County.

Q. Has he been a candidate?

A. He has been a candidate.

Q. Let me describe for you House District No. 28 in the reapportionment plan that is currently being challenged. House District 28 is composed of four posts. Post 1, one representative resident of and elected by Madison County. In your view based on your experience and studies and analysis of Madison County, black voting strength in Madison County, what effect does this county-wide election feature have on black voting strength in Madison County?

A. If this man or woman is to be elected at large from Madison County, he or she is likely to be white because whites have controlled every major at large election, county-wide election, in Madison County in this century.

Q. Posts 2 and 3 are residents of and elected by Rankin County. Rankin County, according to census data, is majority white. [50] Post 4 is one representative elected, either a resident of Madison or Rankin County and is elected by voters in a district composed of both Madison County and Rankin County. What effect does this Post 4 feature have on black voting strength in Madison County?

A. That makes it all the more likely the person elected from Post 4 will be white because I'm sure Madison and Rankin County combined will show a definite white majority in voting age population. Even if blacks mobilized completely, they would not have an effective majority there. Since it's difficult to imagine an effective coalition in the county as it now stands, this would mean that the person elected from Post 4 would not be elected by nor in part by the black community and would not be representing their interests.

BY MR. PARKER:

I have no further questions. You may cross-examine.

DIRECT EXAMINATION BY

MR. ALLAIN:

Q. Doctor, how long have you been in Mississippi?

A. Since 1963. Continuously since 1968.

Q. In 1963, what were you doing in Mississippi?

A. I was a student at Mississippi State.

Q. How long were you here then?

A. One semester.

Q. Then where did you go?

A. I went back to finish up my B.A. which was from

Carleton College in Northfield, Minnesota. The next time I spent [51] time in Mississippi was in 1965, during the summer of 1965, I was employed in the Social Science Lab at Tougaloo College. The next time I spent an extended period of time in Mississippi, not counting visits, would be 1967. I spent about six or seven months in 1967 working in the Delta and living in the Delta doing research for my dissertation. Then, from 1968 on, I've been continuously here.

Q. I'm looking at Exhibits 3, 4 and 5, Maps.

A. Yes, sir.

Q. I understand Exhibit 4 is talking about the 60% and over, you're talking about a county is 60% or over Black?

A. That's correct.

Q. In Map 3, you say 34% and over. What are we talking about when we talk about this?

A. I called that Map 2. But it may be Exhibit 3. Do you mean Evers?

Q. Yes, Map 2.

A. What is you question, sir?

Q. What is [sic] the percentage here in the lefthand column denote? Thirty-four percent and over? What are you talking about?

A. That's the percentage of the vote for any county that went to Charles Evers.

Q. In other words, the county that has 60% and over black, then he got only 34% or over of the vote, is that correct?

[52] A. That's correct. In other words, there's probably some county in the shaded black area which is only 60% black. Others, of course, are 61%, 72%, etc. The same thing is true for the percentage of Evers. Some counties are 34%, others are 38%, 52% and so on.

Q. When you've got 34% and over, there's no way we can tell from the particular map what percent of the vote he got, the exact percent of the vote?

A. No. That's what the table is for.

Q. That's over here in this exhibit?

A. That's correct. The table.

Q. Looking at that table, I notice that . . . let's just take Amite County, for example, where Black population is better than 50%-50.5%—and Evers only got 30% of the vote. Is that correct?

A. 30.7.

Q. Of the vote actually cast?

A. That's correct.

Q. Humphrey got only 29.9% of the vote cast in that election. That's what you've got on this table?

A. That's correct.

Q. I notice in Madison County the overall number of voters, that the blacks are greater than the whites, is that correct? Of registered voters in Madison County.

A. This percent black is the percent black in the total population. It comes from the United States Census.

[53] Q. I jumped over here to this document you've got entitled *In The Public Interest*, put out by this Institute of Politics in Mississippi.

BY MR. PARKER:

What Exhibt is that?

BY MR. ALLAIN:

Exhibit 12.

That shows that the voter registration in Madison County is greater black than white. Is that correct?

A. That's correct. It shows 52.9% of the registered voters are black.

Q. You also testified that your studies show that Humphrey and Evers got approximately the same type vote in the 1968 and 1971 campaign election?

A. That's correct. The same pattern.

Q. And Humphrey is white?

A. Yes, sir.

Q. And yet you still say the black vote along racial lines. I don't understand that.

A. My assertion related actually even more strongly to whites voting on racial lines than it did for blacks. In 1968, you had two major white candidates, and there's no possibility the blacks could vote for a black candidate. There was no black candidate on the ballot. Blacks apparently felt that their interests would be more represented by Humphrey and by his party and the things he stood for than by Nixon and by his party and the things he stood for in his platform. [54] The whites apparently felt their interests would be more represented by Nixon, or at least by not voting for Humphrey. Not all votes against Humphrey were for Nixon.

Q. Doctor, you made up these exhibits, I didn't. The exhibits are made up on blacks rather than whites, and now you're switching over, depicting more or less what whites do, but don't the exhibits depict what blacks do?

A. By subtraction they depict what whites do. I just had to pick one or the other. In other words, what I'm asserting is that although there was no black candidate in 1968, nevertheless, blacks voted for a candidate they felt to be more representative of their interests and they did so as a block, and whites voted for Nixon and Waller as a bloc and voted against Humphrey as a bloc. There was very little white cross-over voting for Humphrey.

Q. Not on racial line. It may be on economic line. On the platform of each one of the candidates?

A. I wouldn't call that economic lines, because there's a great deal of economic overlap between blacks and whites, yet this overlap is not translated into votes.

Q. What did Humphrey stand for, or what did Humphrey's platform stand for in preference to Nixon or . . . let's just say Nixon and leave Wallace out of it?

A. That's difficult for me to testify to as an expert because I've been studying Mississippi politics and not trying to focus on. . . .

Q. Well, let's talk about Mississippi politics. What did the people, the blacks in 1968, why did they vote for Humphrey [55] in preference to Nixon?

A. I can't be a mindreader. I didn't conduct a massive interview research. I would suggest that . . . first of all, I was primarily interested in political behavior rather than what might be in someone's mind. Just as a matter of fact, as to your question of political behavior, blacks did vote overwhelmingly for Humphrey and whites did vote overwhelmingly for Nixon and Wallace. I would also suggest that in Mississippi you have a political party, The Loyalist Democratic Party, which contains such people as Charles Evers who is a black political leader and he, of course, spoke out in favor of Humphrey. Blacks were aware of this, and the whites were aware of this may influence again the fact that whites may have voted . . . whites did vote against Humphrey as a racial group perhaps because black spokesmen such as Aaron Henry and Charles Evers had committed themselves publicly to Humphrey.

Q. We have admitted that Humphrey is white. Do you

know who the electors were supporting Humphrey at that time? In 1968?

A. I don't remember them.

Q. Weren't they all white?

A. I don't believe so. No. I don't remember, though.

Q. You don't know what color they were?

A. I don't remember. I have a vague memory that they were an interracial group.

Q. In 1968, wasn't the war an element in the campaign?

A. Yes.

[56] Q. Do you know whether or not that was taken into consideration by the voter?

A. No. Again, I'd have to do a study of political opinions, political attitudes. I don't know. I would suggest that it was a confused issue, because both Humphrey and Nixon professed to be against the war. Nixon you may remember allegedly had a secret plan to end the war. Humphrey allegedly was going to be his own man with regard to war policy and had only been a vice president and not a president in charge of the war. Furthermore, in Mississippi, I have no evidence that the war issue was a major issue to voters in the state.

Q. In other words, what you're saying is that all you really know is that in a certain county, the population, let's say, is over 50% black, and in that particular county, Evers and Humphrey got a bigger percent of the vote in that county. You don't know why they got that percent of the vote.

A. Well . . .

Q. And all you can testify to is that fact. You cannot testify as to why the people in Desoto County voted a certain percent for Humphrey or for Evers?

A. I have not done any studies of people's minds around the time period in 1968. In fact, this analysis of voting statistics was done after the election and not before. It couldn't have been done before. So, I haven't done any opinion polls and I cannot say from my own knowledge what was in people's minds as they did vote one way or the other. [57] I can state there was a certain kind of political behavior exhibited and I can relate that to race, and I can then come up with statements as I did about the role of black leadership in the Humphrey campaign, things like that. But in terms of an attitude study, I can't.

Q. So, you've made no study as to the difference in the platforms presented to the voters in Mississippi in regard to Humphrey, Nixon and Wallace, and whether or not that platform had any effect on the particular voter in the particular county?

A. I am aware of the platforms, but I have made no study of whether or not that platform made a difference to a particular voter. I haven't studied voters and whether they're aware of the platforms.

Q. In 1968 isn't it correct that the regular Democrats were not seated at the convention?

A. Yes. That's correct. At the Democratic National Convention?

Q. Right. Have you made any study to decide whether or not that element had any effect upon the white democratic voter in the 1968 general election?

A. No. I have not interviewed white voters to see how their opinions were influenced by this.

Q. Have you made any study in Mississippi in regard to the attitude of the voter as to candidate that will bypass a primary and go on the ballot as an Independent?

A. Could you repeat that?

Q. Have you made any study as to how the individual voter feels [58] about candidates who will bypass the primary and go on the ballot as an Independent in the November election?

A. I have not made such a survey of voters, no.

Q. I believe that Evers did run as an Independent in the 1971 election didn't he?

A. That's correct.

Q. Where does the Institute of Politics get its figures from, do you know?

A. No. I only know what they state. In some cases they've gone to the county where they have been able to get current registration figures. In some cases they can get those figures by race. You can't do that in Hinds County, or at least I can't, but in some counties you can get it by race that are based on reports from the Voter Education Project, from the Justice Department, from the Census itself. Plus, they've used various experts. They've gone to different counties and asked people knowledgable about politics. In some counties they've done very extensive studies in order to check the accuracy of their projection, so it's kind of a combination of methods.

Q. Did Madison County have a Federal Registrar?

A. Yes, it had.

Q. Does it still have it?

A. No.

Q. But all those who wanted to register to vote could go down to the Federal Registrar with that problem, is that correct?

[59] A. At times. The Federal Registrar was there for about two weeks in 1972, for example, two and a half weeks. I don't know if the Federal Registrar has been in the county since that time. Federal Registrars are occasionally there. As I said, like the two weeks or two and a half weeks in 1972.

Q. When were you last in Madison County?

A. Around 1:20 this afternoon.

Q. What were you doing up there? You were at Tougaloo. When were you up in Madison County to make a study of the election trends and all these things you've testified to today about Foote Campbell and the attitudes of the people in Madison County as to why they don't vote?

A. I had a conversation today with a black person who is politically active and who is a candidate in Madison County. In terms of a formal study, the last time I made a formal organized study in Madison County was probably the Spring of 1973. I have attempted to keep informed by talking to people on a relatively continuous basis.

Q. Has most of your work been restricted to Hinds County and to Madison County?

A. Or state-wide. In terms of indepth studies of counties, my indepth studies have been limited to Hinds, Madison and Bolivar Counties, and then I've done a considerable amount of state-wide analysis.

[60] Q. Have you made an indepth study of Adams County?

A. No, sir.

Q. Have you made one of Claiborne County?

A. Just of those three counties.

Q. So, actually, you don't know anything about the attitudes and voting patterns or the voting feelings of any of the people in the other counties other than the three you just mentioned?

A. For example, Adams and Claiborne Counties appear on those maps before you. I know how they voted in those three elections. I know how those counties voted in the Goldwater election in 1964 and in the governor's election

and in other elections when I've done state-wide analysis. I have not done, let's say, voting machine by voting machine analysis or box by box analysis in Adams County or Claiborne County or in Noxubee County and so on. I have studied those counties insofar as they become part of the state-wide totals.

Q. Like Chickasaw got 35.6% black population and Humphrey got 13.9% of the vote and Evers got 17%, but you haven't made a study as to why that occurred like that?

A. No, sir.

Q. I don't have any further questions.

[61]

[Certificate of Deponent Omitted]

[62]

[Certificate of Court Reporter Omitted]

[Exhibits Omitted]

Plaintiff's Exhibit P-8
May 7, 1975

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

PEGGY J. CONNOR, ET AL., PLAINTIFFS, vs. WILLIAM L. WALLER, ET AL., DEFENDANTS.	Civil Action No. 3830

DEPOSITION OF DR. GORDON G. HENDERSON

Taken By Plaintiffs

[1]

INDEX

DEPOSITION OF DR. GORDON G. HENDERSON:

	Page
Appearances	2
Direct Examination	3
Reporter's Certificate	85

EXHIBITS TO DR. HENDERSON'S DEPOSITION:
[Omitted]

Exhibit 1	4
Exhibit 2	16
Exhibit 3	16
Exhibit 4	21
Exhibit 5	21
Exhibit 6	23
Exhibit 7	24
Exhibit 8	36
Exhibit 9	38
Exhibit 10	39
Exhibit 11	39
Exhibit 12	40
Exhibit 13	41

	Page
Exhibit 14	42
Exhibit 15	43
Exhibit 16	47
Exhibit 17	51

[2] *APPEARANCES:*

HONORABLE FRANK R. PARKER
Attorney at Law
Lawyers' Committee for Civil Rights Under Law
233 North Farish Street
Jackson, Mississippi 39201

REPRESENTING PLAINTIFFS.

HONORABLE CHARLES MARX
Attorney at Law
Mississippi Highway Patrol
Jackson, Mississippi 39205

REPRESENTING DEFENDANTS.

BE IT REMEMBERED that the deposition of DR. GORDON G. HENDERSON was taken by the plaintiffs in the above styled and numbered cause at 1:35 P.M., on November 1, 1974, in the law office of the Lawyers' Committee for Civil Rights Under Law, 233 North Farish Street, before Mrs. Glenda Ferguson, Court Reporter and Notary Public, pursuant to the following stipulation:

It is stipulated that this deposition is being taken upon notice duly given, pursuant to the Federal Rules of Civil Procedure, and that all formalities for the taking of the deposition are waived, except the reading and signing by the witness.

It is further stipulated that all objections except as to the form of the question will be reserved until the time of trial of the cause.

BY MR. PARKER: Let the record show that Charlie Marx is present representing defendants. Let me just say for the record that this case is perhaps in what we might call unusual posture, and it may be necessary to use this deposition as a trial deposition at some point in the case.

[3] I just wanted to indicate, too, that if it becomes necessary, we will use this as a trial deposition.

BY MR. MARX: For that reason we will reserve all objections except as to the form of the question.

BY MR. PARKER: We will have the usual stipulation.

DR. GORDON G. HENDERSON

after having first been duly sworn by Mrs. Glenda Ferguson, Notary Public in and for Hinds County, Mississippi, was examined and testified on oath as follows:

DIRECT EXAMINATION BY MR. PARKER:

Q. Dr. Henderson, let me hand you a Curriculum Vitae which is dated August 1974, and ask if you can identify that for me?

A. That is my Curriculum Vitae as of August 1974. I have had occasion to look this over in the past two months, and at that time I said that it was correct.

Q. Are there any additions or changes that you wish to make? For example, are you still Secretary-Treasurer of the Southwestern Political Science Association?

A. Not as of the moment.

Q. Are there any other changes in your academic work or teaching or your publications?

A. Apart from the listing of professional memberships, which is incomplete, I would make no other changes in the Curriculum Vitae. My professional memberships that should be included in addition to those listed here are the Midwestern Political Science Association, [4] The Mississippi Political Science Association, The New England Political Science Association, and The Western Political Science Association.

Q. Did you prepare this Curriculum Vitae?

A. Yes, I did.

BY MR. PARKER: I ask that this be made Exhibit 1 to the deposition.

(The said document was marked Exhibit 1, Testimony of Dr. Henderson, and is appended hereto).

EXAMINATION CONTINUING:

Q. What is your current address?

A. 1536 Winchester Street in Jackson, Mississippi.

Q. What is your current position?

A. I am Director of the Computer Center and Professor of Political Science at Tougaloo College in Tougaloo, Mississippi.

Q. How long have you been in that position at Tougaloo College?

A. Since the Summer of 1972.

Q. I believe that your Curriculum reflects that prior to that you were Professor of Government at Texas Tech University in Lubbock, Texas?

A. That is correct.

[5] Q. What degrees do you possess? Academic degrees.

A. I have a Bachelor of Arts and Master of Arts and Doctor of Philosophy Degree, all from Columbia University.

Q. In what field is your Ph.D.?

A. It's in the field of Political Science.

Q. Have you developed any special interests or special areas of expertise in the area of Political Science?

A. I am especially interested and competent in the field of political behavior and attitudes, and political parties.

Q. Have you done any work in your area of specialization in Mississippi?

A. Yes, I have. I have done considerable work as part of routine research and teaching responsibility dealing with politics in Mississippi and have done so for at least the past 12 years.

Q. Would you hit for us, Dr. Henderson, if you would please, the high points of your research and work in Mississippi. Projects that you've worked on and completed.

A. Most recently, I have been interested in two major lines of inquiry. One being the patterns of black and white voting and the social and economic [6] characteristics that tend to be associated with what I would call bloc voting and within the last two years, I have also done a good deal of work in connection, primarily, with my teaching in the area of redistricting. Those have been my major areas of concern.

Q. Have you testified as an expert witness in any previous cases?

A. Most recently.

Q. Can you answer the question yes or no?

A. Yes, I'm sorry. Yes.

Q. In what cases have you testified as an expert witness?

A. In Southern Federal District Court in the Hinds County Redistricting case.

Q. When was that?

A. August 1974. In the past two weeks, immediately in the case in Rankin County Circuit Court.

Q. What was the subject of your testimony?

A. It was social and attitudinal characteristics of young people; most specifically, those 18, 19 and 20 years old.

Q. Have you testified in any other cases?

[7] A. In one other that I remember well, and it is a case that I styled the Jackson Swimming Pool case, and this was sometime in the early 1960's, again in Federal District Court, specifically before Judge Harold Cox.

Q. What was the subject of your testimony in that case?

A. That, again, was a question of attitudes of whites and blacks in Mississippi generally, but most specifically, in Hinds County. That testimony arose out of a study I had done of attitudes in Hinds County.

Q. As Director of the Computer Center at Tougaloo College, are you familiar with the use of computers and computer programming?

A. Yes, I am.

Q. How have you gained that knowledge?

A. A considerable amount of my knowledge in that area has been a matter of self-teaching, necessarily so because by the time I finished all of my graduate work and Ph.D. at Columbia University, the primary and best known of all computer programming languages, the language called Fortran, had not yet been developed, and therefore the languages that I have learned, I have learned on my own and those are the languages that I now have the responsibility for teaching. [8] I also picked up extensive learning and applications experience in the use of computers in the analysis of data at a summer conference sponsored by The National Science Foundation held in Dallas in 1964. I'd say those two lines of activity then, first activity undertaken on my own, and secondly that particular in itself the conference is where I have gathered most of my expertise in the use of computer and computer programming.

Q. Have you used computers and computer programming in any business enterprise or non-academic work?

A. Yes. I was a partner in a survey research firm called

Data Surveys with headquarters in Phoenix, Arizona. As the description of the fund is intended to suggest, one of its primary interests was in the analysis of large blocks of data for businesses such as drug companies for which we had a good deal of business and with city, county and state government for which we did data analysis, and because there was considerable data involved, we necessarily had to make extensive use of computers, and it was primarily my responsibility to superintend the computer analysis of the data.

[9] Q. Does any of your course work at Tougaloo College involve computers or the use of computers? Do you use this in computers or do you teach computer techniques?

A. I teach one course every year in programming language. My responsibilities also include the development of programs for the entire academic instruction in programming. Thus, meaning for example, that I have the responsibility for developing computer programs for students to use in classes and in labs in many different areas of the college, including both the natural and social sciences—Biology, Chemistry, Economics, Sociology, Political Science and so forth. I also use and require students to gain a meaningful amount of knowledge sufficient to enable them to use our computer facilities in the courses, in many of the courses, that they take.

Q. Can you tell me whether or not, Dr. Henderson, within the field of Political Science, there is presently a recognition that computers can be valuable in approaching problems such as legislative redistricting?

[10] A. Yes. There is considerable literature that you can find in the professional journals which indicate the great value computers can have in questions of redistricting. For two reasons—first, that redistricting involves a great amount of data which must be handled in some fashion, and any time there are a lot of facts and figures . . . in a redistricting case, for example, there may be literally thousands of such figures, it makes sense to use a computer to handle these massive quantities of data, and then, second, a computer is especially valuable in a redistricting case because it can do in a short period of time once a program has been written what it would take a person sitting down to do himself with a calculator probably months and quite conceivably years to do.

Q. Is it possible to program computers to work out and solve redistricting problems?

A. Yes, it is. In fact, it's quite common.

Q. Have I asked you to devise a program for the Mississippi Legislative Redistricting based on Mississippi counties used as building blocks to create State Legislative Districts?

[11] A. Yes.

Q. Would you describe for us, Dr. Henderson, how this computer program actually works?

A. The program which I wrote in response to your request is actually two programs. The first program accepts as input the population figures taken from the 1970 census of population for each of the 82 counties in Mississippi and a specification of the adjacent counties for each of the 82 counties. The first program then accepts this data and within certain programming parameters which I built into the program begins with one county and then attempts to find adjacent counties and develop a districting scheme for the entire state. The programming parameters that I referred to are in effect instructions which I received from you.

Q. Before we go into the actual parameters you indicated there were two programs. Could you describe for us the second program?

A. Of course. The second program is one I call the Reapportionment Combo Program, and all it is very simply is a program which examines all possible combinations up to combinations of four of all counties in the state. So, for example, if I had [12] the output program with me, you might ask me what variance above or below the norm is a combination of say County A, B, C, and D and I could look it up on the output of this second computer programming.

Q. What computer did you use for programming this legislative redistricting?

A. I used the IBM 1130 computer at Tougaloo College.

Q. Would you say that within the family of computers this computer would be one of the more or less sophisticated type of computers of the kinds of computers that are available?

A. Particularly within the IBM family, this is a less sophisticated and fairly small machine.

Q. What parameters did you include in your programming? In other words, what criteria did you set out for the redistricting program to start off?

A. There were several. Let me just enumerate them.

(1) Use whole counties, not portions of counties. (2) In effect, devise a plan which had a variance smaller than that in the plan developed by the state. (3) Smaller districts. That is to say a district composed of two counties were to be preferred to larger districts; that is to say a district that [13] contained three or four counties. (4) That there were in the case of the house to be no more than three counties per district, and (5) and finally, that such counties as Leake and Newton which have a common boundary point whereby they could be defined as being adjacent to one another were, for this program, not to be considered adjacent.

Q. You had this requirement, but how could it be expressed another way? Is that a requirement of contiguousness?

A. Yes.

Q. Could you describe the requirement for contiguousness?

A. Contiguousness for the purpose of this computer program was defined to exclude any county which showed only a common boundary point, rather than a common boundary line which could be measured in miles.

Q. What did it include?

A. It therefore included only those counties defined as adjacent that showed a boundary that could be measured in miles.

[14] Q. Did you change at all the number of seats in the Mississippi House or Mississippi Senate?

A. No. I did not.

Q. What population data did you use?

A. I used the population, total population for each county listed in the 1970 Census of Population.

Q. What instructions did you give to the computer with regard to the acceptable variance for House and Senate districts?

A. The program provides for the devising of plans in which the user, that is to say me, indicates what is an acceptable level of variance. Therefore, the program would permit the design of a districting plan for the legislature which will accept any combination of counties into a district that has say 10% variance, 15% variance, 7½% variance. The variance can be specified by the user, and when I came to use the program I simply attempted to design plans within different levels of variance.

Q. What was the goal?

A. The goal very simply was to produce a plan that as much as possible had a span of variance less than the variance of the state's plan.

[15] Q. Was the census population data which you used identified by race or were racial population figures included in the program?

A. No. The program in no way is designed to accept identification of any other characteristic of the population except the total number of people listed for the county.

Q. As a result of your work with this computer program, did you find whether or not using the criteria or the parameters that you've outlined that the variances which are present in the State Legislature's plan could be decreased, or that a plan could be devised which provides for greater equality of population than is provided in the State Legislative Redistricting Plan?

A. I did.

Q. Let me hand you a map which is designated Senate Plan 3-20-73 and ask if you can identify that?

A. I can. I drew this map. That is to say I took a base map which is identified as that of the Tucker Printing House and used a red felt pen to indicate what counties were included in a redistricting plan which was designed by the computer program I've been talking about.

[16] Q. This is a map which is a product of your computer program?

A. That is correct.

Q. The computer didn't draw the map?

A. No. I did.

Q. I ask that this be marked as an exhibit, Exhibit 2.

(The said document was marked Exhibit 2, Testimony of Dr. Henderson, and is appended hereto).

EXAMINATION CONTINUING:

Q. Let me hand you copies of what purport to be computer printout made by the Senate 3-20-73 plan and ask if you can identify that?

A. This is the printout generated by the Tougaloo 1130 of a districting plan for the Senate which was produced on the 20th day of March 1973.

Q. Would you separate the original so that we can mark it as an exhibit to your deposition?

A. Yes.

BY MR. PARKER: I ask that this be marked Exhibit 3 to the deposition.

(The said document was marked Exhibit 3, Testimony of Dr. Henderson, and is appended hereto).

[17] EXAMINATION CONTINUING:

Q. Hand the witness Exhibits 2 and 3 please. Are these the products of your work as you've described in this deposition, Dr. Henderson?

A. Yes.

Q. These plans incorporate the parameters and criteria that you've indicated?

A. Yes.

Q. Using those criteria and parameters that you've indicated previously in your testimony, can you tell us whether this Senate plan represents the minimum possible variance using whole counties and combining as few counties as possible and the other criteria you've mentioned?

A. I believe it does.

Q. How many legislative districts are there in your Senate plan?

A. There are 31 districts.

Q. In how many districts are there more than three counties involved?

A. I count four.

Q. In which districts are those?

A. District 20.

Q. How many counties are combined there?

A. Five.

[18] For how many seats?

A. Two. District 24.

Q. How many counties?

A. Four.

Q. How many seats?

A. Two. District 28.

Q. How many counties?

A. Four.

Q. How many seats?

A. Two. District 29.

Q. How many counties?

A. Four.

Q. How many seats?

A. Two.

Q. So, in all the other counties, there are three counties are less than three counties?

A. That is correct.

Q. Using the computer program which you devised, how close is it possible to get to the equality of population among Mississippi Senate Districts using the criteria which you have outlined?

A. In this plan, one district is 6.26% above the population norm.

Q. Is that the maximum plus variance?

[19] A. Yes, it is. One district has a variance of 4.25% below the population norm.

Q. Is that the maximum minus variance?

A. Yes, it is.

Q. What then is the standard?

A. The standard is is [sic] 10.51%.

Q. In your experience working with this computer program, is this the greatest possible equality of population that can be arrived at using the criteria which you've mentioned?

A. Yes, I believe it is.

Q. Directing your attention to Exhibit 3 which is the computer printout, would you identify for us what information or data is contained on the computer printout?

A. For each district in the plan, a number has been provided, that is, each has been numbered 1-31, and for each of these districts is indicated the number of legislative seats in the district, the name of the counties that are included, the total population of the district, and the actual variance, plus or minus percent.

Q. Is that the variance from the norm?

A. Yes, it is.

[20] Q. Would you define for us what we mean by "norm" in legislative redistricting?

A. In this instance, the number of seats desired was 52, and the norm therefore is calculated by dividing 52 into the total population of the state.

Q. Did you program the computer to calculate the norm in each district?

A. Indirectly, I did. I specified what the norm was and

that is how the program was able to calculate what the variance was for each district.

Q. Is this map and this computer program entirely your work and your product?

A. Entirely.

Q. Have you checked it for accuracy?

A. I have.

Q. Is it accurate?

A. I believe it is.

Q. Let me ask you to identify this map which says House Plan 4-18-73. Can you identify that?

A. I can.

Q. What is it?

A. This again takes a base map identified as that of the Tucker Printing House, and on the base map of [21] the 82 counties in Mississippi, I have taken a red felt pen and indicated the boundaries of the legislative districts for a districting plan generated by the computer for the Lower House of the Mississippi Legislature, and this map represents the ouptut from the computer on the 18th of April 1973.

BY MR. PARKER: I ask that this be made Exhibit 4 to the deposition.

(The said document was marked Exhibit 4, Testimony of Dr. Henderson, and is appended hereto).

EXAMINATION CONTINUING:

Q. Would you hand the witness Exhibits 4 and 5 please? Did you do the same thing for the House that you did for the Senate?

A. I did.

Q. What did you produce?

A. What was produced is the computer printout which is here as Exhibit 5.

BY MR. PARKER: I ask that this be made Exhibit 5 to the deposition.

(The said document was marked Exhibit 5, Testimony of Dr. Henderson, and is appended hereto).

[22] EXAMINATION CONTINUING:

Q. What does that computer printout contain? What data or information does it contain?

A. It, as was true for the Senate, includes a listing of the

counties included in each legislative district. It indicates the number of seats in each district. It indicates the total population of the district, and the actual variance of the district's population from the norm.

Q. Are the counties which are combined into each district and the variances in each district illustrated on the map which is Exhibit 4?

A. Yes, they are.

Q. Have you done that yourself? Did you draw the map?

A. Yes.

Q. Is both the computer printout and the map your work?

A. Yes, it is entirely.

Q. Are there any House districts which contain combinations of more than three counties on this map?

A. No.

Q. You've seen the computer program which you devised. How close is it possible to get to equality of population among House districts using the criteria which you have mentioned before?

[23] A. In this plan one district has a variance of 6.74% above the norm. One district has a variance of 6.32% below the norm.

Q. What is the total span?

A. The total span is 13.06%.

Q. How many House districts does this plan labeled 4-18-73 provide?

A. 35.

Q. Let me hand you another set of computer printouts and ask if you can identify this computer printout?

A. I can.

Q. What is it?

A. This is a plan which was generated by the computer, for the House, on the 10th of March 1973.

Q. Would you separate the original from the copies. Would you mark this Exhibit 7? Would you mark the map Exhibit 6 please?

BY MR. PARKER: I ask that the Map be marked Exhibit 6.

(The said Map was marked Exhibit 6, Testimony of Dr. Henderson, and is appended hereto).

[24] BY MR. PARKER: I ask that the Printout be marked Exhibit 7.

(The said printout was marked Exhibit 7, Testimony of Dr. Henderson, and is appended hereto.)

BY MR. PARKER: Let the record show that we've given copies of all these maps and all of the printouts to counsel for the defendants.

EXAMINATION CONTINUING:

Q. Dr. Henderson, was this plan 3-10-73 generated in the same manner and using the same criteria as the previous House plan?

A. Yes, it was.

Q. Does the computer printout, Exhibit 7, contain the same data, the same categories of data as indicated in the previous printout of the House plan?

A. Yes, it does.

Q. Is this map, Exhibit 6, your illustration on a standard map of Mississippi, the counties that are combined and the variances that are contained in the computer printout?

A. Yes.

Q. Are these, the computer printout and the map, both your work?

A. Yes.

[25] Q. Referring to Exhibits 6 and 7 how close is it possible with this plan to achieve equality of population among the House districts using the criteria which you have mentioned?

A. In this plan one district has a population which is 6.74% above the norm, and another district has a population that is 3.88% below the norm, for a total span of variance of 10.62%.

Q. Is this the greatest equality of population that can be achieved in House districts using the criteria which you have mentioned for the House?

A. I believe it is.

Q. Would you hand the witness Exhibits 4 and 5 please? Comparing Exhibits 4 and 5 which is the House plan 4-18-73 and Exhibits 6 and 7 which is the House plan 3-10-73, according to the criteria which you set out previously, which plan is preferable?

A. According to the criteria, the plan for the House of April 18, identified on the map marked as Exhibit 4, is the preferred plan, because the criteria said that smaller districts were to be preferred to larger districts, and if you

compare the maps you will see that the plan of 4-18 combines Humphreys and Holmes Counties which is a district containing only two [26] counties whereas in the plan of the 10th of March, Humphreys is combined with Holmes and Washington creating a larger district containing three rather two counties. Further, in the plan of the 18th of April, Issaquena is combined with Washington to make a two-county district, whereas in the plan of the 10th of March, Issaquena was combined with Sharkey and with Warren to create a three-county district, and because, as I said, the plan of 4-18 meets the criteria that smaller districts are to be preferred to larger districts, the plan of 4-18 comes closer to meeting these criteria than does the plan of the 10th of March.

Q. On either of your plans, for either the House or the Senate, have you provided for any floterial districts?

A. No.

Q. Have you provided for any place or residence of the plans?

A. No.

Q. Have you calculated the variances in the state's plan exclusive of the floterial districts in House Bill 1389 and Senate Bill 2452?

A. Yes, I did.

[27] Q. I would like for you to assume the purposes of your testimony that the facts in this case show the Senate plan enacted by the Legislature contains a span of variances of plus 9.584—this is for the Mississippi Senate—plus 9.584% and −9.219%. District 29 would be +9.584 for the Senate. Actually, District 19 is −9.319, so that would be the maximum minus. Does that correspond with the calculations that you have for the Mississippi Senate under the state's plan District 19 and District 29?

A. I don't have the calculation for 29, but 19 is close. I may be looking at the wrong printout. I'm looking at Senate Bill 1701.

Q. No, it's 2452. I think they're the same. Let me just ask you to assume +9.584 and −9.319—would be the total span of variances?

A. It would be 18.903.

Q. How do those variances or deviations of population equality in Senate Bill 2452 compare with the variances or deviations in population equality in the Senate plan produced by your computer?

A. May I have Exhibits 2 and 3 back please? (Exhibits given to the witness) In the plan which I devised the total span of variance is 10.51. The maximum [28] variance above the norm is 6.26% and the maximum variance below is 4.25 which means that the variance in my plan is a little more than half what it is in the Mississippi state plan.

Q. Which plan achieves greater equality of population?

A. My plan.

Q. Let me now ask you to assume that the State plan for the House of Representatives has variances of −9.823, and that would be District 18, Grenada and Montgomery Counties and the maximum plus variance of +9.906 which is District 3, Desoto and Marshall Counties. What would be the span of variances from population equality in the House plan enacted by the Mississippi Legislature?

A. 19.729%.

Q. How does the House plan enacted by the Mississippi Legislature compare with your plan for the House in terms of an effort to achieve population equality?

A. In one of my plans, that of the 10th of March, the total span of variance is 10.62%. In my plan of the 18th of April, the total span of variance is 13.06%. The span of variance in both my plans therefore is substantially less than the variance in the state plan.

[29] Q. Which plans provide for greater equality of population among the districts?

A. My plans.

Q. In your opinion as a Political Scientist and based on the research you've done in computer programming for the legislative districts, does the State Legislature's redistricting plan using the criteria that you've mentioned provide the greatest practicable equality of population for the districts for the House or for the Senate?

A. No.

Q. In your judgment or in your opinion based on your work in computer programs, how many plans could be devised that would provide greater equality of population among the districts than the State Legislature's plan for both the House and the Senate using the criteria that you've outlined?

A. The considerable number of runs that I did indicates that there are probably literally hundreds of plans that would come closer to equality of population in the districts than the plans offered by the State.

Q. Your plans utilize multi-member and in some cases multi-county districts, do they not?

A. Yes.

[30] Q. Have you familiarized yourself with the literature in your area of Political Science with regard to the arguments for and against and the criteria and the effects of multi-member districts?

A. I believe I am familiar with that literature.

Q. In your judgment as a Political Scientist, do multi-member legislative districts work to the detrimental disadvantage to any population or interest groups?

A. They can work to the detriment of any cohesive minority within the district.

Q. Would you explain that answer please?

A. I would say that in the present case, for example, a plan that provided for multi-member districts would work substantially against the interests of a black minority in a multi-member legislative district by making effective representation impossible.

Q. What was the purpose then in generating House plans and Senate plans with a computer as you've done in providing for multi-member districts?

A. The purpose of this exercise was simply to determine whether it was possible to devise plans for the House and for the Senate that had a substantially smaller span of variance than did the plans developed by the state.

[31] Q. Was that using the criteria found in the State plan followed by the State Legislative plan?

A. Substantially, yes. As the record has already indicated, there are no floterial districts so there are differences other than simply the variance differences between my plans and the plans developed by the state.

Q. In your judgment as a Political Scientist, which type of legislative district do you believe is preferable, or in your opinion is preferable, multi-member legislative districts or single member legislative districts?

A. Single member legislative districts.

Q. Would you give a reason or explanation for that?

A. A single member legislative district offers a substantial cohesive minority such as a black minority, more of an opportunity to elect a representative of their particular preference than can possibly be accomplished if that minority is a real minority in a multi-member district. A single member district, in other words, permits what would

be a minority in a multi-member district to be a majority in a district with a smaller population.

[32] Q. Is this simply your opinion as a Professor of Political Science at Tougaloo College or is this opinion shared among Political Scientists writing any literature generally?

A. This is a view widely shared by people whose special interest is in voting and elections.

Q. Moving on to another subject. Have you made a study of racial voting patterns in Hinds County, and particularly in the city of Jackson?

A. Yes, I have.

Q. Did you do this study for this particular case?

A. No, not at all.

Q. What was the purpose for making the study?

A. The immediate purpose for pursuing my general interest in this area was to prepare an article for submission to a publication in a professional journal. Do you want my research interests?

Q. Yes.

A. My research interests in it were three. One, I define as simply being that the inquiry was of practical concern to many people, because black plaintiffs have brought suits against multi-member districts, and it can be demonstrated and has been demonstrated that when blacks are less than a majority [33] of the population in a multi-member district, that in itself almost guarantees that black votes are going to be cast for a losing candidate provided that an at-large system of elections guarantees that each voter gets to cast a vote for more than one candidate and thus the corollary of this is that in such a multi-member district, white candidates are certain to win. My second research interest is one which has been the focus of a great many books and articles, particularly written during the last fifteen years and that is, in effect, that candidate characteristics such as a candidate's religion or his being black has upon voting choice and the literature presently contains . . . let me put it this way. There is a general understanding within articles in the literature as of this moment that blacks are among the most cohesive of voting groups in the entire population and that they share a set of policy preferences particularly and attitudes in general which are highly distinctive and which

tends therefore to set them apart at many points from the population as a whole, and from this is argued that black candidates are required in order to adequately represent this distinctive set of policy preferences and attitudes, and my third research interest [34] was the general one of providing a sufficient means of proof of the existence or nonexistence of black voting that would satisfy generally accepted professional standards of proof.

Q. What data did you use in your study?

A. I relied primarily upon two classes of data; data taken from the 1970 Census of Population specifically data found in the census population . . . the census publication known as Block Statistics for Jackson, and the second being Returns by Precincts, election returns, for the 77 precincts in the city of Jackson as of 1971.

Q. Did you also use voter registration data?

A. Yes, I did.

Q. Did you also use maps and precinct data showing the ballots cast?

A. Yes, of course.

Q. Before we get into the results of this data, I would like to ask you some general questions about the procedures. Did you, as part of your study, determine the racial composition of the 77 election precincts for the city of Jackson?

A. Yes, I did.

[35] Q. Why did you use the 77 precincts?

A. Because this made it possible to compare directly voting behavior in 1971 and in 1972, and then again in 1973. The precinct boundaries were changed mainly by the addition of new precincts, new numbered precincts, but sticking only to the 77 precincts that were in existence in 1971 made it possible to compare the voting behavior of precisely the same precincts over the course of this three-year period.

Q. How did you determine the racial composition of the Jackson voting precincts?

A. The block statistics provide for each block the following data, and I am reading the column headings directly from that publication . . .

Q. Would you give us the title and citations of that publication please?

A. The title is *Block Statistics, Jackson, Mississippi, Urbanized Area, Department of Commerce Publication, HC (3)—133.*

Q. What page are you reading from?

A. I am reading the column headings from Page 2. Those column headings are Total Population, Percent of Total Population Negro, Percent of Total Population Under 18 Years, and using those three data for each block it is [36] possible to calculate the number of blacks in each block and then by allocating each block to a precinct to arrive at a figure of the total population, the total black population, the total white population, and the total population 18 years and over for each precinct.

Q. Do you have a computer printout which reflects the data that you used and the results of your study?

A. Yes, I have.

Q. Could I have it please? (Witness hands printout to Mr. Parker)

BY MR. PARKER: I ask that this original which I've just been handed be marked as Exhibit 8 to this deposition.

(The printout was marked Exhibit 8, Testimony of Dr. Henderson and is appended hereto).

Q. Would you hand the witness Exhibit 8 please? (Exhibit 8 given to witness) Directing your attention to Exhibit 8, Dr. Henderson, could you tell us what this computer printout represents?

A. This presents data for each of the 77 precincts in Jackson. It includes under the column PCT the number of the precinct. Under the column, POP the total population in the precinct. Under the column BLK, [37] the total black population in the precinct. Under the column PR, POP, BLK, The Percent of the Population in the Precinct that is Black; in the column 18 & Over, Total, the Number of Persons in the Precinct 18 Years and Over; and under the column 18 and Over BLK, the Number of Persons in the Precinct 18 and Over Who are Black, and in three columns Registration 1971, Registration 1972, and a third column also Registration 1972; the Number of Registered Voters in the Precinct at Three Points in Time. Then, in the column Percent Registered 1971, 1972, and 1972; the Number of Registered Voters at Three Points in Time Expressed as a Percentage of the Total Population in the Precinct 18 Years and Over; and finally, under three columns Turnout 1971, 1972, 1973; the Number of Votes Cast in Three Elections Expressed as a Percent of the Number of Persons in the Precinct 18 years and over.

Q. Let me hand you three documents, and ask if you can identify them?

A. I can.

Q. I'm going to hand copies of these documents to counsel for the defendants. What are these?

A. The first of these documents indicates the number of registered voters in 77 precincts as of June 29, 1971, and I myself have a copy of this document which I obtained myself from the City Clerk's Office, the City Clerk of Jackson, and it is this document that I used to record the registration figures for 1971.

BY MR. PARKER: I ask that the first one, June 29, 1971, be marked Exhibit 9.

(The said document was marked Exhibit 9, Testimony of Dr. Henderson, and is appended hereto).

[38] EXAMINATION CONTINUING:

Q. What is the next document?

A. The next document indicates the total registered voters in precincts in Hinds County as of March 31, 1972.

Q. Did you use this data in your study?

A. I obtained this document from the County Clerk's Office, and it is figures taken from this document that appear as the registration figures, the first of the registration figures for 1972.

[39] BY MR. PARKER: I ask that this document, March 31, 1972, be marked Exhibit 10.

(The said document was marked Exhibit 10, Testimony of Dr. Henderson, and is appended hereto).

EXAMINATION CONTINUING:

Q. What is this document?

A. The third document is a list of registered voters for precincts in Jackson as of October 10, 1972.

Q. Did you use this data in your analysis?

A. I obtained a copy of this document myself from the City of Jackson Clerk's Office, and these are the figures I used for the second registration figure in 1972.

BY MR. PARKER: I ask that this document, October 10, 1972, be marked Exhibit 11.

(The said document was marked Exhibit 11, Testimony of Dr. Henderson, and is appended hereto).

EXAMINATION CONTINUING:

Q. Let the record show that these are copies of . . . certified copies of official documents which were put in evidence in the case of KIRKSEY VS. BOARD OF SUPERVISORS, HINDS COUNTY, MISSISSIPPI, which is the [40] Hinds County Redistricting case, and I can attest that these are copies of the documents placed in evidence as exhibits in that case. Do you concur with that, Dr. Henderson?

A. Yes, I do.

Q. What turnout figures did you use?

A. The turnout figures were calculated by a computer program that I wrote and turnout is merely an expression of the number of votes cast for candidates in elections in '71, '72 and '73.

Q. What '71 election did you use?

A. The '71 election was the election for governor.

Q. What voting figures did you use?

A. The votes cast for candidates for governor.

Q. This is a copy, a certified copy, which was also in evidence and admitted as accurate in KIRKSEY VS. HINDS COUNTY BOARD OF SUPERVISORS. Let me ask you, Dr. Henderson, did your testimony in KIRKSEY VS. HINDS COUNTY BOARD OF SUPERVISORS cover this same study?

A. Yes, it did.

Q. This is a certified copy. I don't have an extra copy, but would like to ask that this be marked as an exhibit.

(The said document was marked Exhibit 12, Testimony of Dr. Henderson, and is appended hereto).

[41] EXAMINATION CONTINUING:

Q. The second document is a certified copy of the '72 presidential election. What figures did you use for the '72 turnout figures, Dr. Henderson?

A. The figures I used there were the figures available from the Secretary of State's Office for the votes for president in 1972.

Q. Now, Mississippians do not vote for presidents. Mississippians vote for presidential electors. How did you resolve the conflict in presidential electors?

A. I chose the highest vote cast for anyone of the presidential electors.

Q. This is a certified copy which is in evidence in KIRKSEY VS. HINDS COUNTY BOARD OF SUPERVISORS indicating the vote for the presidential electors by precinct in Hinds County. I'd like to ask that it be made an exhibit to this deposition.

(The said document was marked Exhibit 13, Testimony of Dr. Henderson, and is appended hereto).

EXAMINATION CONTINUING:

Q. What figures did you use for the '73 turnout figures, Dr. Henderson?

[42] A. The figures reported for 1973 are the votes cast for the three City Commissioners.

Q. This is a copy of a certified copy which has been placed into evidence as an exhibit in KIRKSEY VS. HINDS COUNTY BOARD OF SUPERVISORS indicating the official election returns by precinct for the City of Jackson for the general election for Commissioners and Mayor was held on June 5, 1973. It bears the signatures, or copies of the signatures, of the municipal Election Commission. I'd like to ask that this document be marked as Exhibit 14 and attached to the deposition.

(The said document was marked Exhibit 14, Testimony of Dr. Henderson, and is appended hereto).

EXAMINATION CONTINUING:

Q. Dr. Henderson, do these exhibits which we have marked and attached to the deposition incorporate all the basic data that you used apart from the Census data in your study of racial voting patterns in the 77 precincts of the city of Jackson?

A. Yes.

Q. Does your study show whether black voters and/or white voters have any distinctive preferences in their voting patterns?

[43] A. Yes.

Q. What conclusions do you draw from your study, or what are the results of your study of the racial voting patterns in the 77 precincts of Jackson?

A. Very simply, it indicates first and overall that blacks

tend to vote for black candidates, and whites tend to vote for white candidates.

Q. Can you tell from this data in Exhibit 8, the computer printout, how strong that tendency is?

A. It is possible to tell from this data, it is even easier to tell from the data of another computer printout, and I also have copies of this with me.

BY MR. PARKER: I ask that this document be marked Exhibit 15.

(The said document was marked Exhibit 15, Testimony of Dr. Henderson, and is appended hereto).

EXAMINATION CONTINUING:

Q. What information did you obtain from your study which is incorporated in Exhibit 8 with regard to registration of whites and blacks in 1971 and in succeeding elections?

[44] A. If you will inspect Exhibit 8 carefully you will see that overall registration is lower in predominantly black precincts than it is in predominantly white precincts and that blacks in elections in '72 and in '73 in which no black candidates participated, registration declined significantly in black precincts while as voting studies would lead us to expect, registration in white precincts tended to increase, particularly between 1971 and 1972. Voting studies consistently lead us to expect that this phenomenon will occur and the data of Exhibit 8 is clear evidence that what we know from extensive voting studies going back 30 years did indeed occur in these 77 precincts.

Q. What is the significance of your study in the 1971 gubernatorial election?

A. In 1971 the gubernatorial election serves as a base point because there was in that election a conspicuous black candidate running for governor.

Q. Who was that?

A. Charles Evers.

Q. What is the significance in the 1972 presidential election, how is that significant?

A. In the 1972 election the candidates were white. The office was the office of President, and one would [45] therefore by knowledge of voting studies expect turnout generally to be higher, and in 1972, generally, it was but only for whites.

Q. What was the significance of the 1973 City Council election?

A. Once again, the choice of a city election is important because, from our voting studies you expect turnout in a local election to be lower, generally, than turnout for either a state or national election, and in the '73 election the predictions were perfectly realized for white voters. Turnout declined below what it had been in '72, but it declined at an even greater rate for black voters.

Q. There was a black candidate in that City Council election. I believe James Meredith, is that correct?

A. That is correct, and that's the second reason for looking at that particular election because the data indicates somewhat less well here than it does in the other computer run that blacks in '73 decidedly preferred Meredith to any other candidate who was running, and that whites decidedly preferred white candidates above Meredith in that election, and this then again goes to the point of demonstrating the existence and direction of bloc voting when an opportunity for bloc voting manifests [46] itself as it did in 1973.

Q. We tend to think, or at least the Mississippi press tends to think that bloc voting is blacks voting only for black candidates. Could you tell us if that's what we mean by bloc voting or whether it works both ways?

A. No, it works both ways, very decidedly so.

Q. Have you prepared a table showing the votes for the various gubernatorial candidates in 1971 and the 20 selected precincts in Hinds County?

A. I have prepared several such tables. The one you're handing me is one.

Q. Is this a table you prepared?

A. Yes, it is.

Q. Tell us what this is.

A. This is a table which records the votes received by Waller, the major white candidate in the gubernatorial election of 1971, for Evers, the black independent candidate, and for Judge Brady, a white independent candidate in 20 precincts in Hinds County, all of them in the city of Jackson, 10 of which are predominantly white and 10 of which are predominantly black.

[47] BY MR. PARKER: I ask that the Table be marked Exhibit 16.

(The said Table was marked Exhibit 16, Testimony of Dr. Henderson, and is appended hereto).

EXAMINATION CONTINUING:

Q. What does Exhibit 16 show? Before you answer that question, let me ask you this. How were the black precincts and the white precincts contained in Exhibit 16 selected?

A. The white precincts are those that census data indicates contain at least 98.3% white population, and those precincts indentified as black precincts are precincts that census data indicate are at least 98.4% black.

Q. This table shows the votes received by each of these gubernatorial candidates?

A. It does.

Q. So this table does not necessarily contain information that's in Exhibit 8, but rather it's contained in the actual voting statistics, is that right?

A. That is correct.

Q. You've listed the white precincts and the vote for the white candidates and the black candidates, and the black precincts and the vote for the black candidate and white candidates. What does this table tell you, [48] as a Political Scientist. What does it show?

A. It tells me that white and black voting are mirror images of the others. That is to say, in this election, white voters overwhelmingly preferred a white candidate, Waller, and black voters overwhelmingly preferred the black candidate, Evers, and one can also put this by saying that approximately 95 out of every 100 white votes went to Waller and approximately 95 of every 100 black votes went to Evers.

Q. Does this data confirm or contradict your hypothesis that white voters tend to vote for white candidates and black voters tend to vote for black candidates when black and white candidates are running against each other in an election race?

A. It confirms it.

Q. You testified that the data in Exhibit 8 shows that for 1972 registration turnout declined in the black precincts and increased in the white precincts. Was that your testimony?

A. That is correct.

Q. Does this data confirm or contradict your hypothesis

that white voters tend to vote for white candidates and black voters tend to vote for black candidates?

[49] A. It is consistent with it.

Q. Would you explain that?

A. As I have indicated before, our extensive studies in voting behavior lead us to expect that generally voting will increase when the election is for President to a level higher than what it is in state or local races, and with respect to whites, this was true in '71, '72 and '73, that the absence of an effective possible choice in 1972 and in 1973 went hand and hand with a decline among blacks in registration and in turnout. That is to say specifically with respect to the '71 and '73 elections, the general rule about voting participation, registration, turnout and choice, is that voters are not fools; voters will vote when they believe their vote will count, and in all three elections voter participation by whites was as expected indicating, therefore . . .

Q. What was the expectation?

A. The expectation was that registration would be high, that turnout would be highest in '72 than it was in '71 and much lower in '73, and that because the expectations were met that whites therefore attitudinally must have believed their votes could count, but that among blacks the decline in registration and turnout [50] indicated that even in '73 when a black candidate was running, that there was a substantial belief among blacks that their vote would not count.

Q. What was the election system in which Meredith was running, do you know?

A. He was running in an at-large system.

Q. At-large, city of Jackson.

A. Yes.

Q. From your knowledge of the census data, what is the racial composition for the city of Jackson?

A. It is a majority white population.

Q. Do the turnout figures for '72 and '73 confirm or contradict your hypothesis that whites tend to vote for white candidates and blacks tend to vote for black candidates?

A. The turnout figures are consistent with that finding.

Q. I've asked you how strong was this tendency, and I would like to direct your attention to Exhibit 15, and I'd like for you to explain to us what Exhibit 15 is. Is Exhibit 15 a product of your work?

A. Yes, it is. Exhibit 15 is a computer printout employing some of the same data that was used in the preparation of Exhibit 8 and some additional census data. Specifically, one important figure on the median value of owner-occupied [51] housing in each of Jackson's precincts, and if I may direct your attention . . .

Q. Let me ask if you can identify this that I've just handed you.

A. Yes. This sheet is one that I prepared which helps to identify the data that was used in the preparation of the analysis of Exhibit 15.

BY MR. PARKER: I ask that this document be marked Exhibit 17.

(The said document was marked Exhibit 17, Testimony of Dr. Henderson, and is appended hereto).

EXAMINATION CONTINUING:

Q. Now that we have Exhibit 17 which explains the abbreviations, would you go on with your explanation of what Exhibit 15 consists of?

A. The heart of this computer printout is to be found on Pages 2 & 3, and the heading for each of those Pages is Matrix of Correlation Coefficient.

Q. Would you read the column headings across the top of page 2 and page 3? Would you tell us what they mean?

A. The column headed POP refers to the total population in each precinct. BLK is the total black population in each precinct. WHT is the total white population [52] in each precinct. DUS is the number of owner-occupied housing units in each precinct. VAL means the value of owner-occupied housing units. R71 is the registration figure, that is the number of registered voters as of June 29, 1971. 1R72, the number of registered voters as of March 31, 1972. 2R72, the number of registered voters as of October 10, 1972. BL18, the number of blacks 18 years and over. TL18, the total number of persons 18 years and over.

Q. Let me interrupt you there. Are the other abbreviations explained in Exhibit 17?

A. Yes, they are.

Q. What correlation scale or what scale of correlation coefficients did you use?

A. This correlation coefficient is known as the Pearson Product Moment Coefficient of Correlation.

Q. What is its scale?

A. It can have a range anywhere from −1 thru 0 to plus 1.

Q. Where do the significant correlations appear on the scale?

A. For these data and the number of cases involved, that is, 77, a correlation is clearly significant if it has a value of between .35 and 1.

Q. Plus or minus?

A. Plus or minus.

[53] Q. On page 2 are there any significant correlations or correlation coefficients which confirm or contradict your hypothesis?

A. I direct your attention first to the row which is labeled EVER.

Q. In the lefthand column?

A. That's right. It stands for the vote given to Charles Evers in 1971 and the column that is BLK which is the total black population in each precinct.

Q. What is that?

A. The value of the correlation coefficient of the Evers vote to the total black population is .95.

Q. How significant is that?

A. That is highly significant in that for this kind of relationship between a racial characteristic of the population and the vote for a black candidate. I do not recall ever seeing in the literature a higher correlation.

Q. What other correlations are significant on page 2?

A. If you look at the WALL, it stands for the votes given to the gubernatorial candidate William Waller and the column BLK for the same column, you will see that the value of the correlation coefficient is −.67.

Q. Is that significant?

[54] A. That, too, is significant. Then, if you will look at the row MCG you will see . . . and column BLK . . . you will see the correlation coefficient is .92 and the value of that is that it is lower than the correlation between the black population and the Evers vote.

Q. I notice that the correlation between WALL, the vote for Waller, and WHT, the white population, is 0.97. Is that a significant correlation?

A. That is the next one.

Q. How significant is that?

A. That is a highly significant correlation. It indicates

quite simply that white precincts overwhelmingly supported Waller, and this you can see by an examination of the specific data for the precinct returns.

Q. Do these same significant correlations confirm your hypothesis on page 3 of the printout?

A. Yes. You can find, for example, some of the same correlations. There is a consistency. This is really the same correlation matrix. It simply takes two pages to print it all out.

Q. Could you express for us, Dr. Henderson, in layman's terms what this all means, in terms of voting preferences [55] of blacks and whites in the 77 precincts of Jackson?

A. I can do that in two statements. First, the value of the correlation coefficient . . .

Q. I asked you to do it in layman's terms.

A. It indicates very simply that whites do tend to vote for whites, and blacks do tend to vote for blacks, and secondly, they do so overwhelmingly.

Q. What does this data show about the possibilities of black voters and members of the black population of Hinds County in these Jackson precincts forming political coalitions with whites to effectuate their interests?

A. All of these data taken together shows that the possibility of a coalition building in which whites and blacks will agree on a candidate is highly improbable.

Q. Directing your attention to Exhibit 8, what does your information contained in Exhibit 8 show, if anything, with regard to the portions of whites . . . proportions of eligible whites and proportions of eligible blacks who are registered to vote in the Hinds County Jackson precincts?

A. In all three points in time for which we have an indication of the number of registered voters, it indicates that [56] black registration is always lower than white registration, and on occasion substantially lower.

Q. That's a percentage of eligible persons?

A. Yes, it is.

Q. What does that exhibit show with regard to the percentage of turnout of registered and eligible white and black voters?

A. That, too, generally, the percent that turns out among whites tends to be higher than it is among blacks.

Q. At what stage is black participation in terms of registration and turnout the highest?

A. Most decidedly, it is highest in 1971 when in an election which was appropriately described as a race between two principal candidates, one black and one white.

Q. As a Political Scientist, do you have an explanation?

A. Yes. For my answer I must again refer back to the voting studies which are commonly known within the profession, and from these I say that blacks will participate whether it be through registration, through turnout, through choice, only when they believe that their participation can be effective. That is to say that it can make a difference on the outcome, and [57] that in these three races the circumstances of '72 and '73 for many considerations did not encourage, in fact, it discouraged, black participation.

Q. What are the implications of these results for multi-member legislative districts?

A. I would say that it provides a rather good illustration of the fact that a multi-member district system works against black participation when blacks constitute a minority. That demonstration, I think, is as clear in this data as it is in any data with which I am familiar.

BY MR. PARKER: I don't have any further questions; you may cross-examine.

DIRECT EXAMINATION

BY MR. MARX:

Q. As I understood you to say awhile ago in the '73 election blacks were, in effect, discouraged from voting by the imminent outcome of the election. Is this correct clarification of your thought?

A. Yes, I'd say it was.

Q. Was that the race in which James Meredith was involved in the municipal election?

A. Yes, it was.

[58] Q. Then your statement is, in effect, that the black community recognized Mr. Meredith as a losing candidate and chose not to participate?

A. Yes.

Q. With regard to your breakout, Exhibit 16, of the two 19-county districts, I understood the black precinct or that precinct was depicted as a black precinct, the one in which it had a 98.4% black population, the white population was what?

A. 98.3.

Q. In looking at Exhibit 8 as it compares to Exhibit 16, precinct 33, that particular precinct is shown as an all white, is that correct?

A. Yes.

Q. If then you discount those votes cast for the Democrat Waller and take the vote cast for the two Independent candidates, Evers and Brady, which of the two are greater?

A. The vote for Evers.

Q. Was greater in the all white precinct than it was for the other Independent candidate Brady?

A. Yes, it was.

Q. Precinct 34—is that another all white precinct?

A. Yes.

Q. Would that same characterization be true?

A. Yes, it is.

[59] Q. Precinct 35—is that again an all white precinct?

A. Yes.

Q. Again, the black candidate in the all white precinct, of the two Independents, again received a greater vote than the white independent [sic] candidate?

A. That's true.

Q. Does that affect at all your hypothesis with regard to black for black, white for white?

A. No, it doesn't, for this reason. Those three precincts happen to be precincts which are as Jackson precincts go among the wealthier precincts in Jackson and what it indicates is that there is also a very slight tendency for wealthier persons to be willing to vote for black candidates than the more common, poorer or average level of income persons in Jackson. Rather more to the point it is not really the difference between 33 votes for Evers . . . in Precinct 33 as opposed to 10 for Judge Brady, the other Independent candidate, that intrigues me so much as the fact that there were 620 votes for Waller as opposed to 33 votes for Evers and Precincts 33, 34 and 35 represent about the best performance that Evers could make in the 77 precincts in Jackson. He did better there so that his best performance was to get approximately 3 to 4 percent [60] of the vote cast.

Q. Would you attribute anything to the party leader?

A. Definitely not. That is a very good scholarly question because one of the alternative hypotheses which must be examined in a study of this kind is that the most significant

factor in operation here is something other than race, and I again go back to the same voting studies that I have referred to all along, if there is one factor that tends to be more influential than any other by far in elections in this country it is indeed party, and therefore since party seems to have no effect in these three elections studied here, that in itself is a significant finding.

Q. With regard to Exhibit 8, the population in a precinct, in any one, take no. 1 for instance, you have a population, the first three figures, a black population and then a percentage of blacks. I assume that was at a given point in time and that was the date of the publication from which you derived these figures?

A. That's correct.

Q. Then registration was at three different dates?

A. That's correct.

[61] Q. The percentage of eligible voters was also for three different dates?

A. That's correct.

Q. And the turnout was for three different dates?

A. That is correct.

Q. Do you have any way of determining whether or not the fluctuation in the percentage of population or if there was a fluctuation, whether or not it remained a constant as opposed to these three periods of time?

A. I have only a slight indication. Fluctuations are not at all reflected in this data. What I did in the course of my study was to go to the City Planning Board and find out from them where population movement had occurred in this period of time and from the conversations I had with them and from the data that I examined, I was willing to offer in the study I made that population fluctuations were not significant except in one small instance. If you will look at the very peculiar figure for Precinct 34, you will see that the percent eligible voters registered in 1972 was 107% which is clearly an impossibility. That, however, does not represent population fluctuation. I indicated that the reason for using 77 precincts was to enable comparisons over the same population base in three elections. [62] In one instance where the new numbered precincts were added or created in the city of Jackson, a small population—the number of which I cannot determine precisely—were added from what had before been a named precinct to numbered precinct 34,

and that population figure of 1646 was different by virtue of the movement of the boundary line of the precinct and that is the only one of the 77 precincts that had a boundary change in this period.

Q. As a student of voting attitude in this country, specifically in Mississippi, is the 99% registration figure, is that 99% participation in the voting scheme; is this usual or unusual?

A. In some instances here I would regard it as unusual in that it's not significantly in contradiction to what occurred elsewhere, because the registration figures here are most likely to be high in those precincts which are white and have a high educational level and a high income level and that the pattern is consistent in all 77 precincts.

Q. Following that thought, is an 85.4% turnout, is this just an extension of that same thought?

A. I think it is. The only thing I would add is that it is . . . by saying that it is not shall we say unexpected, [63] I don't want to underplay its significance because I have offered the generalization from the voting studies that voters tend to participate when they believe their votes will count, and that they will participate only if they believe their votes will count or if their votes need count, therefore, these high participation figures indicate that in those precincts with high registration and high turnout, those people are very much concerned with the outcome of elections.

Q. What would it mean to me as a voter to cast a vote for a candidate, in theory at least, why would I vote for a particular candidate?

A. Most generally you vote for a candidate because you believe that your vote will make a difference.

Q. Because I believe my vote would make a difference in the outcome of that election? Then I would vote for my choice of a candidate because I would think or tend to think that my vote would affect the outcome of the election, in essence?

A. Yes.

Q. And if I thought my vote was lost, that it was a futile gesture for me to cast a vote for a particular candidate, the likelihood is that I would not vote?

[64] A. That is correct.

Q. Again, back to Exhibit 16 and those votes cast for Independent Brady, both in the black precincts and in the white precincts, does this affect that theory at all?

A. No.

Q. There was then in the black precincts, more specifically the highest one, I believe, was Precinct 20, ten votes cast for the Independent Brady and following the theory those ten individuals felt they could bring the candidate Brady to election?

A. Yes.

Q. As I understand Exhibit 8, the first precinct again, in 1973 there was a 9.6% of those eligible to vote who actually voted, is that correct?

A. That is correct.

Q. And that information came from the General Election of June 5 or Exhibit 14?

A. Yes.

Q. Precinct 1 on Exhibit 14 shows 130 total votes cast, is that right?

A. Right.

Q. So then that should be 9.6% of those registered, is that correct?

[65] A. No. It should be 9% of those eligible.

Q. Of those eligible to vote, and if there were only 211 registered how do we square 130 as 9.6% with 211?

A. You don't. You're expressing that as a percentage of 674.

Q. Of the total number of persons eligible 18 years of age and over, eligible in theory but not in practice?

A. Right, eligible in theory.

Q. If the figures for 18 and over, that total figure of 674 in precinct 1, again comes from the dated publication here?

A. Yes.

Q. And it would be based upon the 1970 Census?

A. Yes.

Q. So those 17 year [sic] of age in 1970 who would be in one class of persons, by the time the first registration occurred on Exhibit 8, which would be 1971, they would then fall in another category or 18 years of age and over?

A. That's correct.

Q. Is anything taken into account for this growth? Percentage-wise?

A. No, I saw no need to.

[66] Q. It was of no particular significance

A. I did not find that it was.

Q. If a black man chose to vote for a white in either of these three races, would that alter your statistics such that

it would have an influence upon your hypothesis? Maybe, I can make myself a little clearer. The percentage of the population that is black is 61.2% for precinct 1. The total turnout for any of the three elections or the total percent of eligible voters registered in either of the three elections all could in fact be because of their numbers within the white population, could they not?

A. Almost. They could almost all be.

Q. Then the fact that this was the turnout or the turnout as reflected on the exhibit doesn't really tell us anything with regard to black versus white, does it?

A. Not if we refer only to the votes and the other figures for Precinct 1, but at no point am I willing to argue for my generalizations on the basis of data for one precinct only.

Q. If you took the second precinct and did the same thing it would be classed as a black precinct?

A. Yes.

[67] Q. The two higher figures indicate a 28 and 24 percent in the third race. Those could totally exclude the white?

A. Yes, easily.

Q. In fact, this would be a possibility in each of these cases where the figures would admit of such, not just that one precinct, but if the figures admit of such that would be a distinct possibility?

A. Yes, it would.

Q. So what we must in fact do is suppose that a black will vote for a black and not a white, and that a white will vote for a white and not a black?

A. That is what the voting studies indicate will happen and the data is consistent with that.

Q. We have to pre-suppose that to make these figures hold true?

A. In some particular instance you would, but one of the interesting things about these data is that 52 of 77 precincts are, by my definition, white or black precincts and only six of them have a white or black population, that is 20% or more one or the other and that the error that could result from this, what you call this pre-supposition, is in fact something that could also occur because the people checked the [68] box on the ballot and because the data ruled overwhelmingly, that is because there are so many precincts, 52 of 77, that are 98.3% white or black, the

evidence to me of the pattern of white and black voting is quite conclusive.

Q. In the Political Science area, I think white flight is a common denominator in these types of studies, is it not? If you take the whole demography of a town or municipality, of that which includes these 77 precincts or any given area. I'm thinking now of the movement of vote. Is not white flight a fact?

A. You mean population?

Q. Population movement.

A. There is some, to be specific, in Jackson, places like Ridgeland and Flowood, yes.

Q. Is this taken into accord in the statistics with regard to the total population in different time frames?

A. No. As I indicated when I got what data was available, and candidly, it's not the best in the world. It's not in the same league with using these quite firm census figures they may indeed be removed from three years in time from '73 to '70. It did not seem to me [69] that it would make a significant difference in the outcome of the election because the population shifts within precincts overall were not significant.

Q. Total population shift?

A. Right.

Q. Whether or not this became a totally black precinct as opposed to a previously 60-40 precinct, either way, or a total either way.

A. There is nothing in the available data from the Planning Board that indicated anything like that happened. If something of that kind had happened, or, for example, if a great many precincts had been like Precinct 1, that would have raised serious problems for a study of this kind.

Q. I'd like to go back to the earlier discussions of the plans themselves. I believe you chose as an overall goal population equality?

A. That's correct.

Q. In drafting your Senate plan, this was the sole consideration, population equality, the plan which you said was the better Senate plan?

A. Well, there is only one Senate plan.

Q. And your goal was population equality?

A. That was the major goal.

[70] Q. Then you drew two House plans and again popu-

lation equality was the goal of one, but something else you gave consideration to for the second plan.

A. That's correct.

Q. That was the size of the district?

A. That is correct.

Q. How did the size of the district reflect upon population equality? How did they weight with the other? How did one weight with the other?

A. I don't understand.

Q. If in fact population equality is our goal and a major goal, then how did you lessen that goal? What would be the correlation between or the difference in the two plans when you injected another goal, smaller districts?

A. I'm still not certain I understand the question, but let me try to answer. I was given what I would call program parameters in my instructions—Mr. Parker refers to them as criteria. In the process of doing my work I prepared literally dozens of plans, all of which, and as I indicated, I could have developed I know for certain, hundreds of plans that met the goal of equalizing population among districts better than the State plan and when I had done these computer runs, [71] the results indicated there was one rather than two, three, four or five plans that met both the criteria of best population fit and produced smaller as opposed to larger districts, but in the case of the House the results produced two plans, one of which had a lower variance but less well met the second criteria of preferred smaller districts to larger districts. The second plan had a slightly larger variance but met the second criteria of preferring smaller to larger districts better than the first one and following my instructions I was obliged to provide Mr. Parker with two plans for the House.

Q. Then these three plans are the three plans that you came forward with following Mr. Parker's instructions, and you did not give him benefit of all the other plans you developed, simply these three as meeting those criteria?

A. No. I generally described what other plans might be, what they would look like and assured him that my computer runs indicated that these were the three best plans.

Q. Did you give any consideration to the existing districts as they are now in the State plan?

[72] A. No. I specifically rejected that. There are three main types of computer programs which are used in districting. One of them is a plan which has a mathematical model behind it. The second type is one like mine which simply uses counties or some other electorial units as building blocks. The third type of computer plan takes an existing plan and says can it be done better, and I had that option but I had to exclude both the first and third possibility because of the limitations of the size of the computer that I was working with.

Q. That was my thought with regard to the 1130. What was your data bank capacity?

A. We had a core storage of approximately 5200 usable words. We had an additional disc storage capacity of another half million words, and the storage limitation is not a limitation that prevents me from including as much data as I want, but it does mean that the more that I have to store on discs, the longer it takes the machine to design the plan, so we're talking about not a storage limitation quite as much as we are about how many hours of machine time is going to be required.

Q. Then the reason for not comparing the existing plan was simply time economic?

[73] A. That was part of it, but just as well there is no particular advantage in terms of final product in using any one of these three varieties of programs one over the other.

Q. One over the other . . . no particular advantage to either?

A. No. As I'm saying . . . for example, if I had used either of the other two methods I am certain that I would have produced the same plans.

Q. Did you try either of the others?

A. No. I did not.

Q. Did you give any consideration in the composition of your districts to having a district or the people of a district vote on both a Senator and a Representative/or were the two plans developed distinctly apart from one another?

A. They were in fact developed separately.

Q. So that the fact that I might vote on a Senator in one district and a Representative in another district had no place whatsoever in the study?

A. Right. In my language that is not one of the parameters of the program.

Q. You made the statement earlier with regard to the

fact that multi-district could work to the detriment of any cohesive minority. I believe your statement was [74] it can work to the detriment of?

A. Yes.

Q. Did you do any studies with regard to any particular county where this had in fact worked to the detriment of, or are we dealing strictly in theory?

A. No. I think that was demonstrated by the Jackson study. When I defined my three research interests, that was the second of the three interests.

Q. And the detriment was what?

A. The detriment was specifically, and this is new information I've not included this afternoon as one of my conclusions but it is a part of the study, that in the 1973 election white voters' preferences were perfectly realized in the election of Shanks and Kelly because they tended to prefer Shanks above Kelly. Black preferences were unperfectly realized because their preferences were first for Meredith, then almost equally for Kelly and for the City Manager . . . let me get his name . . . Allen. And their third choice was Shanks.

Q. Mr. Meredith was actually a candidate for Mayor, was he not?

A. In '73, no, Commissioner.

[75] Q. Your statement is that it has in fact worked to the detriment, not only can but did?

A. That's correct.

Q. But it is limited to Hinds County and more specifically, the Jackson City election?

A. In my study to the 77 precincts and the election of '73.

Q. But so far as the other 81 counties or the remainder of this one county, Hinds, this was not taken into consideration, we just extend that theory?

A. Not in my studies, no. That's correct.

Q. If in fact this cohesive minority worked to control an election, then what we would have to put it in lay terminology would be minority rule of the public majority rule, would it not?

A. Not in the context of my statement. I said, you see, that it works to the detriment of the minority and therefore unless the minority becomes a majority, it cannot realize its preferences. In the multi-member districts the only way around the probable next to certain outcome is either for

the minority in some fashion by population change to become the majority or to redistrict so as to create single member districts out of a previously multi-member district.

[76] Q. In effect one of the goals of redistricting was simply to ensure that the minority will control some districts?

A. By becoming a majority.

Q. By becoming a majority?

A. Correct.

Q. The norm that you used for each of these districts, I believe you said you developed that aside from the computer and simply placed that in the computer as a fact?

A. That's plugged in as one of the articles of data. The total population and the number of seats in the computer does the calculating.

Q. This was all keypunched, I presume?

A. Yes.

Q. Put in by keypunch. You had this done?

A. I did this.

Q. You did it yourself?

A. I did all of this work myself for the obvious reason that I then don't therefore have to vouch for the accuracy of my keypunching.

Q. Your goal at the outset of preparing these plans I would be safe, I suppose, in saying was to simply create something less than the State plan with regard [77] to variation so we shot at the State plan without doing a study of comparison between the two, the plan you developed and the State plan, but yet we were shooting at the State plan?

A. I can agree with that statement if you take out the part about without making a comparison of the two plans.

Q. I was simply going back to the methodology with regard to block versus study or comparison or the third method that you developed?

A. Yes, in that context, it's true.

Q. What language did you use, you said you did not use Fortran in preparing your program. What language did you use?

A. I did use Fortran.

Q. You wrote your own program?

A. Yes.

Q. In the other cases in which you testified, you testified in each in the interest of the plaintiff?

A. No. In that Federal District Court I testified on behalf of the plaintiff. In the Rankin County case I testified for the defendant.

Q. Who was the defendant?

A. Could I supply that later? I don't remember the names.

[78] Q. Who were the attorneys?

A. The attorney in the Rankin County case was Sebastian Moore. In the earlier case that I referred to, which I styled the Jackson Swimming Pool case, I testified on behalf of the plaintiff.

Q. In the development of programs and I believe we are attempting to portray attitude in the sense of a numerical value. Is that not what we are doing with regard to black voting black and white voting white?

A. We're using figures, voting figures as a representation as behavior that indicates an attitude, yes.

Q. Indication of an attitude?

A. Yes.

Q. I am not at all theory minded with regard to this, but it seems to be human nature that attitudes are known to change even in a moment by a simple act or fact. Is this not a good statement or thought?

A. To that I would respond that individual persons do change attitudes sometimes over a period of time, several years for example, their attitudes can change substantially when it is a matter of political attitudes, and even more when it is a matter of political behavior. The behavior tends to change much less than attitudes.

[79] Q. In other words, specifically with regard to the Jackson Swimming Pool situation, we have come 180 degrees from your first testimony from that first case, not from your testimony, but from that first case. That was the closing of the swimming pools, was it not?

A. That is correct.

Q. And I believe there now exists in Jackson a reopening of the swimming pools?

A. That's correct.

Q. So we're 180 degrees in position?

A. In that sense, public policy has changed.

Q. This is a political response, is it not?

A. It may represent a response to a constituent and our understanding of the factors that influence public policy

decisions is that three factors in particular are important. One being demands from the constituency, one being the, what I would call, internal values of the decision-maker himself. Parenthetically, we do know of cases. There are cases around now in which a policy-maker has made a decision which he knows his constituents cannot approve of and even though he may be interested in the election, he knows that by making that public commitment he's going to be defeated, and [80] then the third major source in politics, generally, is the influence from recognized groups whether they be special interest groups whose interests may be much narrower and indeed in contradiction to those of the majority of the constituency or a broader program for an interest group, that known as the political party. That is to say where we have political party representation, Democrats do tend to take different policy positions from Republicans, so there are three sources. In Jackson, I do not know; perhaps someone does, but the decision to reopen the swimming pools may, in part, be a reflection of the change in constituency attitudes, I admit that freely, but it could also be a response to changes in organized influence including, for example, the anticipated possibility of further lawsuits and court decisions and it could be simply a reflection of the change in internal attitudes of the policy-makers who are in Jackson City government today, which is to say it may, in part, reflect the difference in Russell Davis, the person, and Allen Thompson, the person.

Q. It could in fact simply be a white candidate thinking prospectively courting a black vote?

A. That's possible.

[81] Q. Then in fact if the white candidate were to seek the black vote, the fact that he chose to run in a district which was predominantly black would not necessarily foreclose his election, simply because he was white?

A. No. We would have to consider more circumstances of the case than that.

Q. Than simply black be black and white be white?

A. That again changes the circumstances. If the evidence from this study if the indication is that we have a straight two-way race, a black against a white, the probability—in the black majority district—is that the black is going to win.

Q. Or alternatively to extend that, if it were a white be

white, blacks would not participate, or if it were black be black, the white would not participate?

A. Or at least they would participate at a lower rate.

Q. Significantly lower?

A. Significantly lower.

Q. The only other question I have with regard to the Pearson Product Moment and its level of significance, the standard level of significance I believe you said was .35?

A. For this data, but primarily for the fact that we are [82] dealing with 77 cases. If you consult the table in the back of a statistic's book you will find that for 77 cases the significant level at what's called the .01, one case in a hundred by chance level, is about .3478 or something like that.

BY MR. MARX: I have no further questions.

DIRECT EXAMINATION

BY MR. PARKER:

Q. In Exhibit 16 is it difficult to tell who the candidate was who was favored by the white voters in the majority of white precincts?

A. Not at all difficult.

Q. Who was the candidate favored by the majority of white voters?

A. William Waller.

Q. Exhibit 8—in determining the population of the Jackson voting precincts, what base census data did you use? Just give us the name of the publication or source of the data.

A. The source of the data is Block Statistics, the particular column is that labeled Total Population and it is given for each block in the city.

[83] Q. You used the census publication giving the block statistics for each numbered block within the city of Jackson?

A. That is correct.

Q. Do you know whether or not these block statistics are updated for 1971, 1972 or 1973?

A. They have not been.

Q. Do you know of any source of block data giving accurate and reliable population statistics by race and for 18 over or under for 1971, 1972 or 1973 for the census blocks for the city of Jackson?

A. I have looked and I have found none.

Q. Therefore, is it true that the census data and block data is the most accurate and reliable population data source?

A. I believe it is.

Q. You testified in the Rankin County case. What was the race of the defendant in that case?

A. White.

Q. So it's not true that you only testify for black parties in litigation?

A. It hasn't been.

BY MR. PARKER: No further questions.

[84] [Certificate of Deponent Omitted]

[85] [Court Reporter's Certificate Omitted]

[Exhibits Omitted]

PLAINTIFF'S EXHIBIT P-9 MAY 7, 1975

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

PEGGY J. CONNOR, ET AL.,
PLAINTIFFS,

VS.

WILLIAM E. WALLER, ET AL.,
DEFENDANTS.

Civil Action No. 3830

Washington, D.C.
November 13, 1974

Interrogatories of

HONORABLE J. STANLEY POTTINGER,

called upon to complete interrogatories propounded on behalf of the plaintiffs, pursuant to agreement, under the guidance of Gerald Jones, Voting & Public Accommodations, Civil Rights Division, United States Department of Justice, Washington, D.C., 20530, and transcribed by Helen A. Brown.

[2] For the Plaintiffs:

LAWYERS' COMMITTEE FOR CIVIL RIGHTS
UNDER LAW
By: FRANK R. PARKER, ESQ.
233 North Farish Street
Jackson, Mississippi 39201

JOHN L. MAXEY, II, ESQ.
Community Legal Services
Post Office Box 22571
Jackson, Mississippi 39205

For the Defendants:

HONORABLE A. F. SUMMER
Attorney General of Mississippi
Post Office Box 220
Jackson, Mississippi 39205

WILLIAM A. ALLAIN, ESQ.
Assistant Attorney General
Post Office Box 220
Jackson, Mississippi 39205

For the Honorable J. Stanley Pottinger:

UNITED STATES DEPARTMENT OF JUSTICE
By: GERALD JONES, Chief
Voting & Public Accommodations
Civil Rights Division
Washington, D.C. 20530

CONTENTS

WITNESS:	*DIRECT*	*CROSS*
J. Stanley Pottinger	3	—

EXHIBITS

Pottinger Deposition Exhibit No.	*For Identification*
1 (Copy of letter of objection, September 10, 1971)	J

[3] WHEREUPON,

J. STANLEY POTTINGER,

was called upon to supply Answers to Interrogatories propounded on behalf of the Plaintiffs.

QUESTIONS PROPOUNDED ON BEHALF OF PLAINTIFFS

Q.1 State your name and address.

A. J. Stanley Pottinger, Department of Justice, Washington, D.C. 20530.

Q.2 State your present position.

A. Assistant Attorney General, Civil Rights Division, Department of Justice.

Q.3 State your official duties and responsibilities regarding the enforcement of the Voting Rights Act of 1965, including your duties with regard to the designation and assignment of Federal examiners and observers, the submission of enactments, procedures or practices affecting voter registration and elections, and record-keeping.

A. My duties and responsibilities in connection with the enforcement of Sections 6 and 8 of the Voting Rights Act of 1965, 42 U.S.C. 1973, consist of evaluating the need for, and recommending to the Attorney General the designation of counties for, the appointment of federal examiners and recommending from time to time the utilization of examiners [4] for listing purposes and the utilization of observers as the need arises.

My duties and responsibilities in connection with the enforcement of Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973(c), include making, except in exceptional circumstances, the determination, on behalf of the Attorney General, to object or not to object and to take such other action as may be required by the Voting Rights Act.

My duties and responsibilities concerning the enforcement of the Voting Rights Act of 1965 include keeping records in the ordinary course of business with regard to the submission of enactments, procedures or practices affecting voter registration and elections.

Q.4 In your answers to each of the following questions, state in each instance the basis of your information, if personally known or if ascertained from the records of the Department of Justice or the Civil Rights Division over which you have custody and control, and if the answer is ascertained from such records, state in each instance whether these are ordinary business records within the meaning of 28 U.S.C. §§ 1732 and 1733.

A. The basis for the answer to questions 7 through [5] 10, 12 through 16, 19 through 32 and 34 through 37 are the records of the Civil Rights Division. These records are ordinary business records within the meaning of 28 U.S.C. Sec. 1732 and 1733. The answers to questions 5, 6, 11, 17, 18 and 33 are based on personal knowledge.

Q.5 State whether or not the United States Attorney General has delegated to the Assistant Attorney General, Civil Rights Division, any duties and responsibilities under Section 6 of the Voting Rights Act of 1965 regarding the appointment of Federal examiners, and if so, state those duties and responsibilities.

A. Yes. My duties and responsibilities in connection with enforcement of Section 6 of the Voting Rights Act of 1965, 42 U.S.C. 1973 consist of evaluating the need for, and recommending to the Attorney General the designation of

counties for, the appointment of federal examiners and recommending to the Attorney General from time to time the utilization of such examiners for listing purposes as the need arises.

Q.6 State whether or not, as Assistant Attorney General, Civil Rights Division, you have custody and control of the records of the Department of Justice and the Civil [6] Rights Division with respect to the assignment of Federal examiners pursuant to Section 6 of the Voting Rights Act of 1965.

A. Yes.

Q.7 Based on your own personal knowledge and the records of the Department of Justice and the Civil Rights Division kept in the ordinary course of business, has the United States Attorney General, or the Assistant Attorney General, Civil Rights Division, the present officials or any of their predecessors, certified any political subdivisions within the State of Mississippi for the appointment of Federal examiners to perform duties pursuant to the Voting Rights Act of 1965?

A. Yes.

Q.8 If so, state which political subdivisions of the State of Mississippi have been so designated, the date of each such designation, and whether Federal examiners were assigned to each such political subdivision to list eligible voters.

A. *County*	*Date of Designation*
Amite	3-23-67
Benton	9-24-65
Bolivar	9-24-65
[7] Carroll	12-20-65
Claiborne	4-12-66
Clay	9-24-65
Coahoma	9-24-65
De Soto	10-29-65
Forrest	6-1-67
Franklin	3-23-67
Grenada	7-20-66
Hinds	10-29-65
Holmes	10-29-65
Humphreys	9-24-65

County	*Date of Designation*
Issaquena	6-1-67
Jasper	4-12-66
Jefferson	10-29-65
Jefferson Davis	8-18-65
Jones	8-18-65
Kemper	10-31-74
Leflore	8-9-65
Madison	8-9-65
Marshall	8-5-67
Neshoba	10-29-65
[8] Newton	12-20-65
Noxubee	4-12-66
Oktibbeha	3-23-67
Pearl River	4-29-74
Rankin	4-12-66
Sharkey	6-1-67
Simpson	12-20-65
Sunflower	4-29-67
Tallahatchie	8-14-71
Walthall	10-29-65
Warren	12-20-65
Wilkinson	8-5-67
Winston	4-12-66
Yazoo	10-28-71

All counties have had examiners assigned for listing purposes except Bolivar, Kemper, Sunflower and Yazoo.

Q.9 State the justification or justifications for the designation of such political subdivisions for the appointment of Federal examiners and for the appointment and assignment of Federal examiners to each such political subdivision.

[9] A. On the date listed as the date of designation for each political subdivision, except Pearl River, listed in response to Question 8, *supra*, the Attorney General certified, pursuant to Section 6 of the Voting Rights Act, 42 U.S.C. 1973d, that in his judgment the appointment of examiners was necessary to enforce the guarantees of the Fifteenth Amendment of the Constitution of the United States in that particular subdivision. On April 29, 1974, the Attorney General certified, pursuant to Section 6 of the Voting Rights Act, 42 U.S.C. 1973d, with respect to Pearl

River County, that he had received complaints in writing from 20 or more residents of Pearl River County alleging that they had been denied the right to vote on account of race or color under color of state law and that he believed such complaints to be meritorious.

Q.10 State the total number of persons, by race, listed by Federal examiners for each such subdivision, and if subsequently persons have been removed from such listings, state for each political subdivision the number of persons, by race if possible, who have been so removed.

A. According to information furnished the Department of Justice by Civil Service Commission the following numbers of persons have been listed and removed from federal [10] listings in Mississippi:

County	*Listed White*	*Listed Black*	*Removed*
Amite	11	453	6
Benton	0	538	19
Carroll	0	926	3
Claiborne	8	1,410	180
Clay	47	1,476	18
Coahoma	92	4,577	843
DeSoto	298	1,228	51
Forrest	150	966	127
Franklin	8	77	12
Grenada	2	1,510	10
Hinds	1,012	12,336	138
Holmes	17	4,684	592
Humphreys	33	2,235	424
Issaquena	5	67	24
Jasper	8	665	33
Jefferson	0	2,070	2
Jefferson Davis	4	1,132	6
Jones	51	2,357	390
Leflore	153	8,579	1,558
Madison	150	8,013	470
[11] Marshall	6	98	0
Neshoba	27	764	47
Newton	2	731	22
Noxubee	5	2,355	6
Oktibbeha	112	288	8
Pearl River	9	172	0
Rankin	136	1,011	23

County	*Listed White*	*Listed Black*	*Removed*
Sharkey	10	390	8
Simpson	25	1,464	153
Tallahatchie	1	131	0
Walthall	3	1,362	154
Warren	307	1,720	58
Wilkinson	52	100	11
Winston	0	58	18

Q.11 State whether or not, as Assistant Attorney General, Civil Rights Division, you have custody and control of the records of the Department of Justice and the Civil Rights Division with respect to the assignment of Federal observers to Mississippi subdivisions pursuant to Section 8 of the Voting Rights Act of 1965.

A. Yes.

[12] Q.12 Based on your own personal knowledge and the records of the Department of Justice and the Civil Rights Division kept in the ordinary course of business, has the United States Attorney General, or the Assistant Attorney General, Civil Rights Division, the present officials or any of their predecessors, requested the assignment, which assignment was made, of Federal observers to any Mississippi political subdivisions to perform duties pursuant to the Voting Rights Act of 1965?

A. Yes.

Q.13 If so, state which political subdivisions Federal observers have been assigned to and the dates of the elections so observed by such Federal observers.

A. *Election*	*County*
June 7, 1966	Benton
	Carroll
	Claiborne
	Clay
	DeSoto
	Holmes
	Humphreys
	Jasper
[13]	Jefferson
	Jefferson Davis
	Jones
	Leflore

Election	*County*
	Madison
	Noxubee
November 8, 1966	Benton
	Carroll
	Claiborne
	Clay
	DeSoto
	Holmes
	Humphreys
	Jefferson
	Leflore
	Madison
	Neshoba
	Noxubee
	Rankin
	Winston
[14] November 22, 1966	Greenwood (Leflore)
February 13, 1967 Special Election	Grenada
February 27, 1967 Run-off	Grenada
May 2, 1967	Sunflower
August 8, 1967	Amite
	Benton
	Carroll
	Claiborne
	Coahoma
August 8, 1967 Primary	DeSoto
	Franklin
	Forrest
	Grenada
	Hinds
	Holmes
	Humphreys
	Issaquena
	Jasper
	Jefferson
	Jones
[15]	Leflore
	Madison

Election	*County*
	Marshall
	Neshoba
	Noxubee
	Rankin
	Sharkey
	Simpson
	Sunflower
	Warren
	Wilkinson
August 29, 1967 Run-off	Benton
	Carroll
	Claiborne
	Coahoma
	Grenada
	Holmes
	Humphreys
	Jefferson
	Leflore
	Madison
[16]	Marshall
	Neshoba
	Noxubee
	Wilkinson
November 7, 1967	Bolivar
	Carroll
	Holmes
	Issaquena
	Sunflower
	Wilkinson
February 27, 1968 Special Congressional for 3rd Congressional Dist.	Amite
	Claiborne
	Franklin
	Hinds
	Jefferson
	Warren
	Wilkinson
March 12, 1968 Run-off	Amite
	Claiborne

Election	*County*
[17] March 12, 1968 (cont.)	Franklin
	Hinds
	Jefferson
	Warren
	Wilkinson

Election	*County and Municipalities*
June 4, 1968 Municipal Elections	Centerville (Wilkinson)
	Woodville (Wilkinson)
	Lexington (Holmes)
	Greenwood (Leflore)
	Belzoni (Humphreys)
	Tchula (Holmes)
	Pickens (Holmes)
	North Carrollton (Carroll)
	Shelby (Bolivar)
[18]	Friars Point (Coahoma)
	Edwards (Hinds)
November 5, 1968	Amite
	Benton
	Claiborne
	Holmes
	Issaquena
	Jefferson
	Leflore
	Marshall
	Noxubee
	Sharkey
	Wilkinson
May 13, 1969	Amite

Election	*County*
May 13, 1969 (cont.)	Coahoma
	Hinds
	Holmes
	Humphreys
	Jefferson
[19]	Leflore
	Marshall
	Sunflower
	Wilkinson
June 3, 1969	Amite
General Election	Bolivar
	Carroll
	Hinds
	Holmes
	Humphreys
	Madison
	Wilkinson
November 18, 1969	Leflore
November 3, 1970	Amite
	Bolivar
	Coahoma
	Holmes
	Madison
	Marshall
	Sunflower
	Wilkinson
[20] December 7, 1970	Claiborne
Port Gibson	
August 13, 1971	Amite
Primary	Benton
	Coahoma
	Issaquena
	Madison
	Marshall
	Noxubee
	Sharkey
August 24, 1971	Issaquena
Run-off	Jefferson Davis
	Marshall
	Noxubee
September 23, 1971	Humphreys
Special	
November 2, 1971	Benton

Election	*County*
November 2, 1971 (cont.)	Bolivar
	Claiborne
	Clay
	Coahoma
	Holmes
[21]	Humphreys
	Leflore
	Madison
	Marshall
	Noxubee
	Oktibbeha
	Sunflower
	Tallahatchie
	Wilkinson
	Yazoo
August 24, 1972	Humphreys
Special	
Run-off	
November 7, 1972	Claiborne
	Issaquena
	Madison
	Wilkinson
November 16, 1972	Issaquena
April 1, 1974	
Yazoo City	Yazoo
Municipal Election	
May 28, 1974	Marshall
Local Special	
Election	
November 5, 1974	Kemper

[22] Q.14 State the justification or justifications for the request and assignment of Federal observers to each such political subdivision.

A. For each of the above listed elections, the Attorney General determined that the presence of observers pursuant to Section 8 of the Voting Rights Act of 1965, 42 U.S.C. 1973f, was necessary in order to insure the protection of Fifteenth Amendment rights.

Q.15 State whether the Department of Justice, Civil Rights Division, has since August 6, 1965, filed any lawsuits to protect the voting rights of citizens in the State of Mississippi.

A. Yes.

Q.16 If so, state the caption, style, or title of each such lawsuit, the civil action number, and the district in which each such lawsuit was filed.

A.

Case	*C.A. #*	*District*	*Date*
United States v. *State of Mississippi*	3791	S.D. Miss.	8-7-65
United States v. *State of Mississippi*	3312	S.D. Miss.	1-10-66
United States v. *Executive Committee of the Democratic Party of Leflore County*	GC6632	N.D. Miss.	2-11-67
[23] *United States* v. *Shannon*	DC-69-28-K	N.D. Miss.	5-17-69
United States v. *Hinds County Board of Supervisors*	4983	S.D. Miss.	9-17-71
United States v. *Marshall County Board of Election Commissioners*	WL-7153-K	N.D. Miss.	10-19-71
United States v. *Humphreys County Board of Election Commissioners*	CC71-141-S	N.D. Miss.	12-28-71
United States v. *Leake County Board of Election Commissioners*	4771	S.D. Miss.	10-28-70
United States v. *Marshall County Board of Election Commissioners*	WC-73-28-K	N.D. Miss.	1-26-73
United States v. *Callicutt and County Board of Election Commissioners*	WC-72	N.D. Miss.	4-6-73
Stewart and United States (Intervenor) v. *Waller, et al.*	73-42-S	N.D. Miss.	8-6-73
United States v. *Board of Supervisors of Warren County, et al.*	73-W-48N	S.D. Miss.	10-31-73
United States v. *Kemper County*	E74-65C	S.D. Miss.	11-1-74

Q.17 State whether or not the United States Attorney General has delegated to the Assistant Attorney General, Civil Rights Division, any duties and responsibilities under [24] Section 5 of the Voting Rights Act of 1965 for passing on submissions pursuant to that section, and if so, state those duties and responsibilities.

A. Yes, my duties and responsibilities with regard to passing on submissions pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973(c), include making, except in exceptional circumstances, the determination, on behalf of the Attorney General, to object or not to object.

Q.18 State whether or not, as Assistant Attorney General, Civil Rights Division, you have custody and control of the records of the Department of Justice and the Civil Rights Division with respect to submissions affecting voter registration and elections pursuant to Section 5 of the voting Rights Act of 1965.

A. Yes.

Q.19 Based on your own personal knowledge and the records of the Civil Rights Division kept in the ordinary course of business, has the United States Attorney General, or have you, or any of your predecessors on behalf of the United States Attorney General, objected pursuant to Section 5 of the Voting Rights Act of 1965 to any legislation enacted by the Mississippi Legislature affecting voter registration and elections?

[25] A. Yes.

Q.20 If so, identify each such objected to enactment by title, Code number, and/or bill number, and if legislation amending preexisting statutes, the Code number of the statute or Code section so amended, and the date of each such objection.

A. Title: Unentitled
Code # and/or bill number: H.B. 68 (1966), Code #3260
Amended Code Section: § 3260 Code of 1966
Date of Objection: May 21, 1969
Title: An Act Providing Use of At-Large Election for Counties.
Code # and/or bill number: H.B. 223 (1966), Code #2870
Amended Code Section: § 2870 Code of 1942
Date of Objection: May 21, 1969
Title: An Act to Amend § 2870, Code of 1942

Code number and/or bill number: H.B. 643 (1971) Code #2870

Amended Code Section: § 2870, Code of 1942

Date of Objection: September 10, 1971

Title: Appointment of County Superintendent of Education in Specific Counties

Code Number and/or Bill Number: H.B. 573, 1966

Amended Code Section: § 6271-08, Code of 1942

Date of Objection: May 21, 1969

[26] Title: Qualification of A Candidate for Office

Code # and/or bill number: H.B. 362 and 363 (1970)

Amended Code Sections: H.B. 363 amended §§ 3120 and 3260, Code of 1942; H.B. 362 amended §§ 3107-04, 3108.5, 3118.5, 3118.7, 3121, 3123, 3152, 3153, 3209.5, 3226, 3237, 3239, 3261, 3263, 3279, 3280, 3281, 3286.5, 3313.5 and 3315 Code of 1942 and repealed §§ 3105, 3107-08, 3107-05, 3107-07, 3108 through 3119, 3124 through 3138, and 3140 through 3157, Code of 1942.

Date of Objection: April 26, 1974

Q.21 State whether or not each of the Section 5 objections listed in response to Question No. 20 above is a final decision, or whether any of them were withdrawn, rescinded, or overturned as a result of further administrative proceedings.

A. Each objection listed above is a final decision.

Q.22 State whether or not with regard to any of the Section 5 objections listed in response to Question No. 20 above, the State of Mississippi, the chief legal officer of the State of Mississippi, or any other qualified official has filed an action in the United States District Court for the District of Columbia for a declaratory judgment that such enactment does not have the purpose and will not [27] have the effect of denying or abridging the right to vote on account of race or color. If so, state the disposition of each such action.

A. No such action has been filed for any above listed objection.

Q.23 State whether or not the attached document, designated Exhibit A herein, is a true and correct copy of a Section 5 objection lodged on behalf of the United States Attorney General to the 1966 amendments to Miss. Code Ann. Sections 2870, 3260, and 6271-08 (1956 Recomp.), which legislation was enacted by the Mississippi Legislature

and submitted to the United States Attorney General pursuant to Section 5 of the Voting Rights Act of 1965.

A. Yes.

Q.24 State whether or not the attached document, designated Exhibit B herein, is a true and correct copy of a Section 5 objection lodged by you on behalf of the United States Attorney General to House Bills 362 and 363, Mississippi Legislature, 1970 Reg. Sess., which legislation was enacted by the Mississippi Legislature and submitted to the United States Attorney General pursuant to Section 5 of the Voting Rights Act of 1965.

[28] A. Yes.

Q.25 If the United States Attorney General, or you or any of your predecessors on behalf of the United States Attorney General, have objected pursuant to Section 5 of the Voting Rights Act of 1965 to any other legislation or amendments to legislation enacted by the Mississippi Legislature, and submitted pursuant to Section 5, please attach a copy of each such objection as an exhibit to your deposition.

A. See copy attached as Exhibit J.

Q.26 Based on your own personal knowledge and the records of the Department of Justice and the Civil Rights Division kept in the ordinary course of business, has the United States Attorney General, or have you or any of your predecessors on behalf of the United States Attorney General, objected pursuant to Section 5 of the Voting Rights Act of 1965 to any at-large, countywide plans for the election of county officials required by State law to be elected by districts submitted by any Mississippi county pursuant to Section 5 of the Voting Rights Act of 1965, or written any letters to officials of Mississippi counties objecting to any at-large, countywide plans for the election of county officials normally elected or required by state law to be elected by districts.

[29] A. Yes.

Q.27 If so, state for each such objection, the name of the county submitted each such at-large, countywide election plan, or planning to implement each such at-large, countywide election plan, and the date of the Section 5 objection or objecting letter. In each case, designate whether the letter sent was a Section 5 objection to a submitted plan or

a letter objecting to a plan which was not submitted pursuant to Section 5 of the Voting Rights Act of 1965.

A. *County*	*Section 5 Objection Sent*
Attala	June 30, 1971
Grenada	June 20, 1971
Carroll *	June 7, 1971
Itawamba *	April 16, 1970
Tishomingo *	July 7, 1970

* These letters were in response to Section 5 submissions but were not objections to the plans on the merits. In each, the Attorney General advised the submitting authority of the invalidity of the action they were undertaking pursuant to state law.

[30] Q.28 State whether or not each of the Section 5 objections listed in response to Question No. 27 above is a final decision, or whether any of them were withdrawn, rescinded, or overturned as a result of further administrative proceedings, or whether in any case an action was filed in the United States District Court for the District of Columbia which resulted in a declaratory judgment that such plan did not have the purpose and would not have the effect of denying or abridging the right to vote on account of race or color.

A. No objections were withdrawn, rescinded or overturned, nor were any actions filed in the United States District Court for the District of Columbia.

Q.29 Based on your own personal knowledge and the records of the Department of Justice and the Civil Rights Division kept in the ordinary course of business, has the United States Attorney General, or have you or any of your predecessors on behalf of the United States Attorney General, objected pursuant to Section 5 of the Voting Rights Act of 1965 to any county redistricting plans submitted by any Mississippi county, other than at-large, countywide election plans?

[31] A. Yes.

Q.30 If so, state for each such objection, the name of the county submitting each such county redistricting plan and the date of each such objection.

A. *County*	*Section 5 Objection Sent*
Attala	September 3, 1974
Copiah	March 5, 1970
Grenada	August 9, 1973
Hinds	July 14, 1971
Leake	January 8, 1971
Marion	May 25, 1971
Tate	December 3, 1971
Tate	November 28, 1972
Warren	April 4, 1971
Warren	August 24, 1971
Warren	February 13, 1973
Yazoo	July 19, 1971

True and accurate copies of the letters of objections lodged on behalf of the Attorney General to the redistricting submitted by Attala County and the redistricting submitted by Marion County are attached as Exhibits K and L respectively.

Q.31 State whether or not each of the Section 5 objections listed in response to Question No. 30 above is a final objection, or whether any of them were withdrawn, rescinded, or overturned as a result of further administrative proceedings, or whether in any case an action was filed in [32] the United States District Court for the District of Columbia which resulted in a declaratory judgment that such plan did not have the purpose and would not have the effect of denying or abridging the right to vote on account of race or color.

A. After the Attorney General entered an objection, Copiah and Tate Counties submitted plans which were altered to correct the objectionable qualities and the Attorney General interposed no objection to those plans. After the Attorney General entered an objection, Leake County submitted to the Attorney General a redistricting plan, as required by an order entered by the United States District Court for the Southern District of Mississippi, to which the Attorney General interposed no objection. No objections were otherwise withdrawn, rescinded, or overturned and no suits were filed in the United States District Court for the District of Columbia.

Q.32 State whether the attached documents, designated

Exhibits C through I herein, are true and correct copies of Section 5 objections lodged on behalf of the United States Attorney General to county redistricting plans in Mississippi counties submitted by such counties to the United States Attorney General pursuant to Section 5 of the Voting Rights Act of 1965.

A. Yes.

Q.33 State whether or not the United States Attorney General, or you on behalf of the United States Attorney General, have determined pursuant to Section 5 of the Voting [33] Rights Act of 1965, that the current Mississippi reapportionment plan, enacted as House Bill 1389 and Senate Bill 2452, Miss. Laws, 1973, Chs. 456 and 457, approved April 6, 1973, is a change in any standard, practice, or procedure with respect to voting required to be submitted to the United States Attorney General pursuant to Section 5 of the Voting Rights Act of 1965.

A. No determination has been made by the Attorney General nor by myself on his behalf that House Bill 1389 and/or Senate Bill 2452, Miss. Laws, 1973, Chs. 456 and 457, approved April 6, 1973, jointly or severally are changes within the meaning of Section 5 of the Voting Rights Act of 1965. However, the question of whether such statutes constitute a change within the meaning of Section 5 of the Voting Rights Act of 1965 is currently under evaluation.

Q.34 If so, state whether such enactments have been submitted to the United States Attorney General pursuant to Section 5 of the Voting Rights Act of 1965.

A. Department of Justice records do not reflect that such enactments have been submitted pursuant to Section 5.

Q.35 If such enactments have not been so submitted, state what steps have been taken by the Department of Justice [34] or the Civil Rights Division to require their submission. If a letter has been written requiring such submission, please attach to your deposition a copy of such letter.

A. See Answer to Question 33. No action has been taken to require the submission of such enactments.

Q.36 Based on your own personal knowledge and the records of the Department of Justice and the Civil Rights Division kept in the ordinary course of business, has the United States Attorney General, or have you or any of your predecessors on behalf of the United States Attorney General, objected pursuant to Section 5 of the Voting Rights

Act of 1965 to any other change in voting qualifications or prerequisites to voting, or standards, practices, or procedures with respect to voting submitted by the State of Mississippi or by any Mississippi subdivision, not included in any of the above questions, on the grounds that such change had a racially discriminatory purpose and/or effect, or that the submitting authority had failed to show that such submitted change would not have a racially discriminatory purpose and/or effect?

A. Yes.

Q.37 If so, state for each such objection, the name of the State of Mississippi political subdivision which submitted such change, the subject matter of the submission, and [35] the date of each such objection.

A.

Political Subdivision	*Subject Matter*	*Date of Objection*
Shaw (Bolivar County)	Appointment of city clerk	11/21/73
Grenada (Grenada County)	Redistricting, numbered posts, majority requirement	3/20/72
Jasper County	Reregistration of voters	6/8/71
Lafayette County	Polling place	7/16/71
Marshall County	Polling place; precinct change	12/3/71
McComb (Pike County)	Annexation (Withdrawn 1/3/74)	5/30/73
Pearl (Rankin County)	Incorporation (Withdrawn 1/3/74)	11/21/73
Indianola (Sunflower County)	Numbered posts	4/20/73
Tate County	Precinct change; polling place	12/3/71
Hollendale (Washington County)	Appointment of City Clerk	9/19/73

[36]

[Certificate of Deponent Omitted]

[38] [Certificate of Reporter Omitted]

[Exhibits Omitted]

Amendment to P-9
May 7, 1975

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

PEGGY J. CONNOR, ET AL.,
PLAINTIFFS,

v.

WILLIAM E. WALLER, ET AL.,
DEFENDANTS.

Civil Action No. 3830

Washington, D.C.
January 17, 1975

An Amendment to the Interrogatories of the

HONORABLE J. STANLEY POTTINGER

called upon to complete interrogatories propounded on behalf of the plaintiffs, pursuant to agreement, under the guidance of Gerald Jones, Voting Section, Civil Rights Division, United States Department of Justice, Washington, D.C. 20530.

Answer to Question 31 (page 32 of Interrogatories).

The first sentence of the answer to Question 31 is amended to read as follows:

After the Attorney General entered an objection, Marion, Copiah and Tate Counties submitted plans which were altered to correct the objectionable qualities and the Attorney General interposed no objection to those plans.

/s/ J. Stanley Pottinger
J. STANLEY POTTINGER

• • •

[Affidavit Omitted]

• • •

Plaintiff's Exhibit P-10
May 7, 1975

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

Civil Action No. 3830

PEGGY J. CONNOR, ET AL., *Plaintiff*

vs.

WILLIAM L. WALLER, ET AL., *Defendants*

DEPOSITION OF RIMS BARBER

APPEARANCES:

HONORABLE FRANK R. PARKER, Attorney at Law, Lawyer's Committee for Civil Rights Under Law, 233 North Farish Street, Jackson, Mississippi 39201

REPRESENTING THE PLAINTIFF,
PEGGY J. CONNOR, ET AL.

HONORABLE GILES BRYANT, Special Assistant Attorney General, Post Office Box 220, Jackson, Mississippi 39205

REPRESENTING THE DEFENDANT,
WILLIAM L. WALLER, ET AL.

Taken at 9:00 A.M., February 3, 1975, at the offices of Lawyer's Commission for Civil Rights Under Law, 233 North Farish Street, Jackson, Mississippi 39201, at the Instance of the Plaintiff.

INDEX

	Page
Style, number of cause, appearances	1
Index	2
Deposition of Mr. Rims Barber:	
Direction Examination by Mr. Parker	3
[Exhibits Omitted]	
Exhibit "1", List of Black Candidates	20
Exhibit "2", Publication of Institute of Politics	23
Exhibit "3", 1971 Election Results Analyses	52
Exhibit "4", Optimum Black Vote Analysis	63
Exhibit "5", House Bill 515 Amendment	72
Exhibit "6", House Bill 515 Amendment	74
Exhibit "7", Map—Levee Districts	85
Exhibit "8", Map—Consolidated School Districts	87
Cross-Examination by Mr. Bryant	90
Re-Direct Examination by Mr. Parker	109
Conclusion of Deposition	111
Deponent's Certificate	112
Court Reporter's Certificate	113

[3] *RIMS BARBER*, sworn by Polly J. Pinson to duly answer questions, testified as follows:

DIRECT EXAMINATION BY MR. PARKER:

Q. State your name and address, please.

A. My name is Rims, R-I-M-S, Barber, B-A-R-B-E-R. I live at 166 River Park Drive, Jackson, Mississippi.

Q. Is that your home address or office address?

A. Home address.

Q. What's your office address?

A. 520 North President Street.

Q. In Jackson?

A. In Jackson.

Q. By whom are you employed?

A. I'm employed by the Delta Ministry which is part of the National Council of Churches of Christ.

Q. What is your capacity, what is your position with the Delta Ministry?

A. Associate Director.

Q. How long have you been Associate Director with the Delta Ministry?

A. About a year and before that, Assistant Director and before that Educational Director.

Q. Before Educational Director?

A. I didn't have a title.

Q. What is your educational background, please?

[4] A. I graduated from college, Coe college with a——

Q. What was the name of the college?

A. C-O-E.

Q. C-O-E?

A. College, Cedar Rapids, Iowa, with a—I graduated with honors with a major in Political Science. I went—too a year of graduate school in Political Science at the University of Iowa and then I changed and went to Princeton Theological Seminary for three years, graduating in 1962.

Q. And did you receive a degree at Princeton?

A. Yes, right. A degree in Divinity.

Q. Was that a Master's degree?

A. That is a master's level degree and I haven't been back to school since.

Q. How long have you lived in Mississippi?

A. Ten years.

Q. And you came to Mississippi with the Delta Ministry, is that correct?

A. That's correct.

Q. Would you describe—have you had any experience in voter registration activities in Mississippi?

A. Yes, I've had a number of experiences with voter registration.

Q. Would you describe the voter registration work that you have done in Mississippi?

[5] A. Right. The first voter registration work I did was in 1964, talking to people before the passage of the Voting Right Act. Talking to people about getting registered and their inability to get registered in Madison County, which was where I was working at the time and getting them to fill out forms which we called Freedom Registration Forms, which were alternative outside the system, formed for the purpose of developing a base for the 1965 January challenge of the Mississippi Congressional Delegation. Subsequent—well, in 1965, with the passage of the Voting Rights Act, I

was involved in an intensive voting or voter registration drive in Madison County. I spent most all of my time in '65 and early '66 on that, covering, you know, just blanketing the county. Subsequent to that, I've been involved in voter registration efforts in Hinds, Washington, Bolivar, Sunflower, Issequenna, at least those directly, direct participation knocking on doors, taking people physically to the registration office, talking to them before and after to get their feelings and so forth.

Q. Was the voter registration activities concentrated among members of any particular race?

A. Yes, they were concentrated among blacks.

Q. While in Mississippi, have you assisted any black candidates in their campaign for office?

A. Yes, I have.

Q. Would you describe your experience in that [6] regard, please.

A. Yes. The first campaign—well, it was the Freedom Campaign with Vincent Devine in '64, and then the first real campaign under the laws of the State of Mississippi was—I assisted Clint Collier in 1966, in the early stages of his campaign in what was then the Fourth Congressional District. I also assisted Mrs. Sanders and Mr. King in their—in 1966 in their efforts in the then Third Congressional District. In 1967, I held, along with a number of other people, workshops for candidates and campaign workers and for voter registration workers and poll watchers; a series of workshops around the State in which I believe that more than 75% of the blacks that ran for office in '67 attended those, and a sizeable number of the people who were subsequently poll watchers and so on, attended the workshops which we conducted. Our basic assistance was to get people to understand the law, learn the procedures and we assisted people in working out the structures to make that, within their local community, to make that work and then subsequent to the election, helped them to analyze whether those structures paid off and whether there were flaws in them and what needed to be done to do better the next time, because this was the first real massive black effort to participate in the electoral process and it seemed very important that this experience be a good one and that people learned from it, because a lot of mistakes were made; It was just brand new to people. [7] They'd never been

allowed to participate before in any meaningful way. It was overcoming, you know, this exclusion from the political process that necessitated an intensive effort both before and interpreting afterward.

Q. After 1967, what additional efforts did you make to assist black candidates in their campaigns for office?

A. In '68, I tried to interpret some of the help again in getting ready for two congressional candidacies, Mrs. Barnes and Mr. Hall's; tried to build off the basic knowledge which we gained in '67. In '69, we worked with municipal candidates in doing much the same thing. In '71, I guess is the next big one, I again took what we had learned, again doing workshops in communities, helping people understand what the law was, what needed to be done, how best to organize to gain their—a fair chance at getting elected.

Q. What candidates, if any, did you assist in '71?

A. There is a long, long list, several . . .

Q. Well, could you give us, to the best of your knowledge, the ones that you did render assistance to?

A. Wow. O. K. It would be easier to tell you the counties that I worked in than it would be to name each and every candidate although I could find . . .

Q. Tell us the counties that you worked in.

A. O. K., we worked with Holmes, Humphreys, Madison, Washington, Bolivar, Marshall, Hinds, Claiborne, Issaquena, [8] Noxubee, and a few others, you know, I mean, those were—those I recall specifically going to.

Q. And you generally assisted black candidates in those counties?

A. Yes.

Q. Have you assisted any black candidates in their campaign for office since 1971?

A. Yes. I worked with, in the same fashion, in the 1973 municipal elections and during this past year, '74, worked with the people in Claiborne County on three special elections that were held in that county.

Q. Do you have any background or experience in analyzing voting patterns and results in elections?

A. Yes. The first—I would say that '67, was when I first began to look seriously at these. because the most overwhelming thing was '67 was the number of people who lost and thought they were going to win. They needed to know why they lost.

Q. Now, when you say they, the people?

A. We're talking about black candidates, so what I tried to do was take systematic looks at a variety of things: (1) is taking—I've looked at things like impounded ballots that were—that were challenged. Challenged ballots in which we could identify by the name on the outside the race of the person involved and look at those and see how people voted and [9] develop patterns off that; looked at absentee ballots, again which one could determine the race of the person by the name and look at the same thing, the absentees tend to be white and the challnged ballots tended to be black. To look at those in a comparative fashion. To look at voting patterns in precincts and work out probabilities of—of how people voted, based on statistics or analysis of precinct votes. This involved looking first at all black and all white or nearly all black and nearly all white precincts in various parts of the State to see if—to look for patterns that emerged and general patterns did emerge in that which have held up in subsequent elections.

Q. Could you tell us what patterns emerged?

A. O. K. Well, we can get to that later.

Q. O. K. did you notice—just let me ask you this, did you do this also for 1971?

A. Yes. Yeah, I did it for '71, and subsequently.

Q. And did you notice any pattern of voting for any particular candidates on the part of white voters and on the part of black voters?

A. Yes, it—I could find very rare, very rare instances where the whites voted for a black in excess of 3%, it would be very rare. There are two precincts here in Jackson that have a—people view them as being the more liberal precincts, and tend to vote higher, up to 6-7% for a black can-
[10] didate. When I get into the more rural areas of the State, I find that at least 99% of the whites vote for a white candidate. In the black precincts around the state, the same holds true and it is the probability—well, it's a little bit more of slippage in the blacks but you're talking about 90-95% instead of 97-99%, but there is a block vote that's not in the black community of 90-95% and a block vote in the white community of 97-99%, give or take a shaving in some differences in some areas for peculiar reasons.

Q. Did you analyze the election results for 1971 in the general election?

A. Yes.

Q. What type of analysis did you perform?

A. As I said before, the purpose of doing the analysis was to help people in the black community who were new to the political process learn as much from the experience as possible. The purpose was, then, to give to people some documents and words and verbally to help them understand the patterns and what it means for their campaigns and their participation in the future.

Q. What were the factors you looked at?

A. We looked at a number of factors. One was—well, the first one that one has to look at is registration, and from a variety of people who looked at the question of registration there is a differential between the black and the [11] white community in terms of registration on the general level, somewhere between 10 and 17%. By that I mean that in a given county, perhaps 80% of the whites are registered and 65-70% of the blacks are registered. It is almost a sliding scale with about a 10-15% 10-17% differential between.

Q. You're speaking about the percentage that are eligible?

A. Of the eligible voting age population that are registered. The first thing one has to look at is, are people registered, and in—there are some tendencies, urban areas register a little bit better in the black community than rural areas. Hill countries [sic] better than delta countries [sic]. There's very low registration in some particular areas and high registration in some, but on an average, it comes out 65-70% of the blacks are registered and somewhere in the neighborhood of 80% of the whites are registered.

Q. What other factors did you look at in your analysis?

A. The next thing we have to look at is the question of turnout. Turnout is noted, not only by how many people—well, the starting point for looking was, how many people voted for Waller, Evers and Brady together; you add those up and come up with the total. Then you want to know whether there are any other people who went to the polls who didn't get their vote counted. I think there were about 20,000 people who went to the [12] polls that day that didn't get—either did not vote for Governor on purpose, did not vote for Governor on accident or did not get their vote counted for some other reason. We looked at the—for instance, each printout form on the IBM thing here in Hinds

County and found that, I have the percentages here somewhere, but it was 2-3%—3% in the black community and one or less than 1% in the white community. Apparently they did not vote for Governor: that is, they either didn't push the stylus all the way through or they, you know, something—their card, they didn't have a vote counted for Governor, so that you have to add some people turning out who did not get their votes counted, for whatever reason. There also were challenged ballots and others that added on to that—to that figures, so we came up with about 20,000 people in addition to those who voted for Governor, and that was the highest vote getting office. We looked at turn out and found that there tended to be again a differential of about 10% or a little more between the turn out of whites and the turn out of blacks. We then looked at a variety of other things, trying to confirm that. We looked at the polling books, for example, I have looked at the polling books of Claiborne County recently in which we attempted to determine how many people had not voted in a period of time, whether there was any consistent pattern and we find that there are patterns. We have done the same look in four or five other counties on a selected random sampling kind [13] of basis. Here I find that in the white community that—well, there are three groups of voters that emerge from such an analysis. There are those that vote almost every time. There are some people who would vote just to get out of the house that day or whatever. They just vote every time there is an election, and there is a good number of whites in this—in this grouping and there are a lesser percentage of the black registered voters that are in this group. Then there's a group that votes when it's a generally big election. They vote periodically, regularly and the majority of each group, both black and white, are in this group. Then there's a group of people who hardly ever vote. In fact, we found somewhere around 10-15% of the black voters who have never voted and they were registered, and we find very few whites who have not ever voted since they were registered or who vote very, very seldom; once or twice in a ten year period. This is, in some sense, explainable.

Q. Let me ask you, in your analysis of the 1971 election, were there any other factors that you looked at?

A. Yes. One was the—we looked to see if there were any black candidates for whom whites voted, to see whether

there was a block vote that held. We found a few instances and on names, I can recall them. They stand out in one's mind. Robert Clark, who is an incumbent, running for reelection to the House of Representatives, received 400-500 white votes, [14] mostly from the Durant area in his bid and Dr. Conner, running for the House in Oktibbiha County, received some University votes, and Dr. Stringer, running in Lowndes County, received some substantial number of white votes and then there was one really weird one where, and which I've never followed up to figure out why, the man running for, the black funeral director in West Point, running for coroner, received almost 50% of the white votes and it's the only time that any percentage more than 10% has ever gone to a black candidate, so he holds the record, as far as I can tell.

Q. You cite these examples as patterns and norms?

A. Well, as exceptions that I could recall for you as related because they stood out so vividly in my mind. No, we looked at it very seriously and found that except for these four people that I've named, that nobody got more than 3-4% of the white vote, no black candidate got more than 3-4%, and in most cases, got a much smaller percentage. I also looked at a number of other things. This slippage—or how about—did people vote for every name—every position on the ballot and that the tendency was for white people to vote with a high degree of consistency and for black people to vote with a lesser degree of consistency. In some counties, there was a higher consistency than others, but there tended to be a slippage of about 15% between the highest vote getter and the lowest county-wide vote getter.

[15] Q. You mean among blacks candidates?

A. Among black candidates, so that in almost all instances—Mr. Evers, in the '71 election, got the highest number of black votes and there were four exceptions to that, also. He got the highest number of black votes and then it would drop off. People would go in and vote for Evers and walk out—some people—a few people. The major exceptions in the black pattern occurred at the office of Sheriff and Supervisor, which tended to be those positions which blacks voted least consistently on in any block. That they tended to vote for all other races in a block but that there tended to be a slippage that was greater in the black community than there was in the white community in terms of consistency of

voting for the entire slate, if one wants to call it that. We looked at a number of other lesser factors, but . . .

Q. Have you assisted in the preparation or in the writing or in the analysis of any published studies of racial voting patterns in Mississippi?

A. Yes, I have. I have a number of minor ones in that groups like the voter registration project or the joint political studies groups.

Q. The Joint Senate on Political Studies in Washington?

A. That's right, in Washington. What is tended to happen is a day or two after an election or a week after an [16] election, we'd talk on the phone at some length, trying to narrow down factors so that they can—I've assisted them in putting out what they want to put out. I've worked with —I helped Lester Salamon, whose article was—was, I think, a major article in the American Political Science Review in December of '73. He's since sent me his manuscript for my comments and, you know, we talked about it. It is his article which I think created some controversy in the political science world, was an attempt to use Mississippi data to talk about what are the causes of black lack of participation in elections. There has been, before the publication of his article, a general agreement in the academic world that it was apathy on the part of black people, that unless you would prove that people were beaten over the head at the polls, there was no such thing as fear or any other kind of scale that would work, but I think they were a little too academic in their scales, but at any rate Les attempted to develop another set of scales. A set of scales that lean most heavily on economic insecurity as a criterion for judgment and what his study shows, in the main, is that—well, he put the counties on a percentage basis; he ranked them by economic black, economic insecurity index and then he ranked them by the percentage of the voting age population that voted for blacks in a coupe of elections and found there was a high correlation between a high percentage voting and a low percentage of economic insecurity. That the higher [17] the insecurity level, the lower the voting level. And that had to do with things like how many people on welfare, how many people in tenant houses, that kind of a factor.

Q. Are there—do you see cause from anyone before or after major elections in Mississippi?

A. Yes.

Q. From whom?

A. The Justice Department always calls two days before an election, wanting to know where the problems are going to be.

Q. Could you be more specific about this—problems, you mean the Attorney General calls you or who calls you?

A. No, well, it would be somebody like Sid Bixler who is currently in charge of Mississippi in the Voting Rights Section of the Civil Rights Division of the Department of Justice. So that I would get a call from those people—get a call from newsmen who want to know where to cover or want to know what races seem to be viable, what races are just being run for whatever other reasons, that are not—there's little chance of winning. So that I get calls that find some assessment of where the candidacies are going, where there's a real race, prior to the election, from the news and from other people interested in monitoring the elections. I get calls after elections from people wanting to know who won, . . .

Q. You said people, would you be more specific?

[18] A. Yeah. I get calls from—well, for instance, the local press have consolidated their efforts in some kind of computerized system so that, during the '74 November elections, all they gathered was congressional data and nobody knew how many school board members had won or lost or anything like that from that system they had developed, so that people called me wanting to know how many black school board members won. And that kind of thing, so that the local press would call, people like the Voter Educational Project—those kind of people would call to find out what happened and some of them are interested in why and some opinion beyond simply the facts.

Q. Let me ask you, Mr. Barber, as a result of your efforts in 1971, let me ask you whether or not you became familiar with the black candidates who were running for the legislative offices?

A. Yes, I did.

Q. And would you describe how you gained that knowledge?

A. Well, I'd worked with Robert Clark for four years, giving him some assistance as he was the only black in the State Legislature and felt that many people looked to him as being their representative because they were black and he was overwhelmed by the work involved with that and

sought assistance and we had been giving him some assistance. We then were requested by some of the others to give them some [19] some assistance in making the decision as to whether to run or in deciding how to campaign and deciding a variety of campaign tactics. They would look to our advice on voter registration or something as they prepared to run and then assisted some of them in looking at their election, other than Bob, who one [sic]. Everybody else lost and some of them wanted to know why they lost, and we attempted to analyze and look at their campaigns to see where the losses were.

Q. Let me hand you a copy of a document which is Exhibit 24 to our request for admission of facts and documents in this action. This proports [sic] to be a list of black candidates for the State Legislative office for 1971?

A. Right.

Q. Let me ask you if you have analyzed this list?

A. Yes, I have.

Q. Can you tell us whether or not this list is accurate?

A. To the best of my knowledge, this contains everybody who ran for the Legislature who was black in 1971.

Q. Does it also, to the best of your knowledge, correctly give the districts and post the results?

A. Yes, yes, it does.

BY MR. PARKER: I ask that that be marked as Exhibit "1".

(Whereupon said document was marked as Plaintiff's Exhibit "1").

[Exhibit Omitted]

[21] Q. Do the State officials maintain voter registration figures by race in Mississippi?

A. No. Some county officials do, some don't.

Q. Do you know of any reliable studies or reliable data that we can use in this lawsuit in determining the black voter registration in Mississippi?

A. Well, a number of people have put their hand to try to figure it out. I would think, from my experience, that the Institute of Politics is probably the most nearly accurate study because they have talked directly to each and every registrar in the State in order to ascertain figures and have

talked to a lot of people in an attempt to verify figures, so it wasn't just an off-the-wall kind of thing, I think it is a fairly comprehensive study. I have some reservations about the view of those figures. I think they . . .

Q. Do you have a copy of the IOP study?

A. Somewhere here on the desk or in my briefcase, I do, yes, sir.

(Mr. Barber gets document out of briefcase.)

Q. Is this a published study, by the way?

A. This is a published study; it's dated, let me see what the date on it is—1971—my goodness, it doesn't have a specific date on that when they did it. Total Registration Surveys between December, 1970 and March, 1971.

(Mr. Parker left room to make copy of the ten page publication.)

[22] Q. Is this a copy of the study which you just produced, Mr. Barber?

A. Yes.

(Mr. Parker shows photocopy of four page document to Mr. Barber.)

BY MR. PARKER: I ask that that be made Exhibit "2" in the deposition, please.

(Whereupon said document was marked as Plaintiff's Exhibit "2", and appears immediately following this page:)

[Exhibit Omitted]

[27] Q. Now you indicated that you had some problems with some of the figures on the IOP racial voter registration statistics. Would you indicate to us at this time where those difficulties appear?

A. Right. Those difficulties appear in some counties that seem not to have cleaned their books up very well and that is especially apparent in areas with high out-migration ratios. We did a serious study in Bolivar County and determined that a good number of people who were registered in the early days of the voting rights act [sic], '65-'66, then there was a sizeable out-migration wave in that area, in the Delta area during '67-8-9 and that a sizeable number of peo-

ple who had registered during '65-66 had subsequently moved and were alive and well in Chicago and were still carried on the books, so that in some counties, we think there is a lower black registration number than physically are on the books.

Q. Would you give us the names of any other counties where you believe this to be true?

A. Yeah, I think Coahoma County is a particular example in which the Coahoma County figures 21,000 currently is what they're claiming to be on their books, and my estimates are that 3,000 blacks have either died or moved away in the meantime and that would change their voter registration from being 55% black to being 51% black or 50 point something. It would substantially change the ratio between black and white [28] if one takes a critical look at who is really there. In going over, as I said before, we had looked at polling books as one item and finding people who members of the community knew to be dead, people still on the books and that's why they hadn't voted since they registered there, either moved or died.

Q. So would it be fair to say that the IOP study, if it errs at all, that it errs in favor of inflating black registration rather than depressing black registration?

A. Yes.

Q. What did these studies and particularly the IOP studies show with regard to percentage of eligibles registered in the white and the black communities?

A. They show that there is a disparaging—that the white community tends to be registered in a higher percentage than the black communities. Their differential—

BY MR. PARKER: You may refer to notes if you like.

A. Excuse me, yes, I have to refer to my notes that I have in here. Excuse me. (Gets notes from his briefcase.) There's a differential of 17% between black and white registrations.

Q. Now would you explain that?

A. That means that— they have in their studies alluded to two figures ranging from 63 to 70% of the blacks [29] being registered and . . .

Q. This is a percentage of the voting age population?

A. Voting age population, right.

Q. In the black communities registered to vote?

A. That's right and 80 to 87% of the white population.

Q. White voting age population registered?

A. Yes, white voting age population.

Q. Registered?

A. Registered.

Q. That study, then, shows that disproportionally fewer eligible blacks are registered to vote in Mississippi than whites?

A. That's right.

Q. Is the difference statistically significant in your view?

A. Oh, yes, very significant.

Q. As a result of your studies of election and turn out and as a result of your voter registration work, what explanation is there for this significant gap in black and white registration in Mississippi?

A. Well, the first factor is the previous discrimination prior to the '65 voting rights act [sic], there were virtually no blacks registered and in some counties, where no blacks knowingly registered and there were people who had experiences [30] during '63-64, in the early 60's, who attempted to register and were turned down and in some cases that had, you know, real problems in attempting to register.

Q. Would you tell us what problems those were?

A. Well, three people died in that period—being shot immediately following attempts to register which the community generally interpreted as an attempt to scare them off from such attempts and reacted with proper fear. I will not testify as to who shot or why, particularly; all I can say is that the effect on the community was one of intimidation.

Q. Are you familiar with Vernon Daimer and his wife?

A. Yes, I am.

Q. What happened to him?

A. He was fire-bombed in Hattiesburg.

Q. Are you familiar with Wallace Jackson in Natchez?

A. Yes.

Q. What was his work?

A. He was bombed.

Q. What was his "work"?

A. Oh, he was working on voter registration.

Q. What happened to him?

A. He was killed with a bomb.

Q. Are you familiar with any instances in which persons attempting to register to vote at the court house were [31] set upon by dogs or the police?

A. Yes. I have—been with—people who were attempting to register who were arrested for—or ushered away by police.

Q. Where was that?

A. Uh, in Canton.

Q. How does past discrimination and voter registration affect the current black registration, if at all?

A. Well, in a couple of ways. One is that—that past discrimination is something that stays on in the memory a good while so that there is kind of a community memory of discrimination that's fairly important in the sub-culture, and there are—for instance, there is a disproportionate number of older people in the black community as compared with the white community, and these older people lived most of their lives during periods of discrimination and are fairly well set in their ways and are largely incapable of overcoming past discrimination in terms of their own personal action. It tended to be the younger people who were not as traditionally tied to certain acts of obedience who took on the cause, however, there are notable examples—exceptions of older people who went out there and fought pretty good for their rights but it was mostly younger people who said, "by golly, we're going to make the change" and the older people who were more dependent either economically or just out of habit who held back and the black [37] community has a disproportionate number of older people. So that's part of it. I think that the discrimination which has been well documented in the educational field, for instance, and the imposition of the test which was there until '65 sufficiently discouraged people—it sufficiently—the educational deprivation lead [sic] people to be more economically and socially dependent so that educational level does have something to do with a person's level of confidence in one's self, and personal ability to get a job that is in a category that is somewhat independent, so that—we find that people who are farm laborers or maids are less independent. I could give you, it's really quite—I know an old man in Yazoo County, oh, he must be around seventy. We'd gotten him registered and he was scared to death; went and asked him to go vote in '71, and he said "the man's going to find out—how I vote", and we tried to explain, "no, it's a secret ballot." We told him that he could vote and "you don't have to tell him, you can vote for the person you want to vote for and

we think you have that right." The old man screwed up the courage, went down there and voted. The next day the owner of the place came around to each person who had been to the poll that day and said, "who'd you vote for?" This poor, old, seventy-year old man said to us, "I ain't never lied to Mr. Charlie in my life and I just couldn't do it, so I told him I voted for Mr. Evers," and he was kicked off the place, had to go find himself another job. [33] His family has lived on the place for three generations, here he was seventy years old, roughly. Uh—that kind of feeling; the feeling that somebody's really going to know, uh, is prevalent among the older people, or the inability to say, "that's none of your business" to Mr. Charlie. It's just very difficult for them. They are bound by a certain tradition, even going up into the polling place, for many of them was a difficult task—"why are you here?" gets asked of them, you know, for what reason. They feel it implied even if it isn't asked, so that—for many, it's still a difficult task.

Q. Are there other factors that contribute to the depression of black voter registration in Mississippi? Is age a factor, I think you mentioned age?

A. There's age.

Q. Do social and economic characteristics play a role?

A. Well, I'd—yeah, I would say yes, that lack of transportation—there's a generalized correlation between, between economic social standing and whether you are active—in almost anything. If you have a car, a telephone, a television set, a decent house and a job, you're more likely to be active in church and civic affairs and a variety of other things. If you don't have those things, you tend not to be active and to not come out and vote or to not come out and get registered or—we find people who are—well, let me [34] give you a couple of other examples. We've done some studies on participation in other programs such as Medicaid screening program which is for children of ADC mothers and the best results the state can get is a 50% participation level, because. .

Q. Fifty percent of the eligibles?

A. Fifty percent of the eligibles and they attribute that to lack of transportation and lack of ability to read and write, to read the notices that come in the mail, so that here's a free service to give your child a physical which you are clearly entitled to and they send you three notices setting up

appointment dates but people either cannot get there or don't know what the heck the notice is saying. Another kind of example is that about half the people on welfare do not participate in the food stamp program. They just—it's too much hassle to go down there and wait in line, to stand up there and talk about their life and have themselves looked at, it's too much hassle and they don't do it. They can not go out. They stick closer to their own community. They talk more with their narrow group of people. They don't see the world in much of a larger view. They tend to see today as today. They tend to save everything they have, to be very conservative in personal habits, although that conservation takes on strange twists at times. Many people who say, "I have a piece of silver silverwear," and you ask them where it is and it's between the mattresses and they say, "if I take it [35] out and use it on the table, I might lose it," and they're not going to be able to say, "I have a piece of silver silverwear so I will save it between the mattresses and never use it so that I can always say I have it." A very conservative kind of thing and they're very conservative of what they have and protective of what they have and one of the ways in which they protect themselves is to not stick their neck out unless it's overwhelmingly important to them. It takes a lot of work with many of these people to get them to stick their neck out. They have to really sense that this is going to make the difference, and many of them, when we sit and talk with them, say, "what difference is it going to make?" They want to know whether the person is going to win or lose, because if they think the person is going to lose that they're going to vote for, the black candidate, or they potentially might vote for, then they don't want to go out and vote on the losing side—that's a far out position, that's not very conservative. That's not protective. They don't want to vote for a loser. And then they say, if he wins this, it's going to make a difference. Is somebody that's going to protect me? And the answer to is somebody going to protect me, the answer is no, nobody is going to protect you. If the man wants to throw you out of the house he will or whatever. And sometimes you'll say, "well, they can't take you off welfare arbitrarily, just because you go vote." People don't believe that. I've sat and talked to people at great [36] length, trying to convince them of the fact that their vote is secret, that they can go and vote and

that they will not lose their welfare or the food stamps or whatever they've got that they're trying to conserve. That seems to be their basic problem, conserving what they've got and they don't believe me, so there is still a reticense [sic] among the poorest of the poor and among the elderly to get out there and participate. In fact, there are certain counties that have more of these kinds of people than other counties. Tunica County would have the highest index, for instance, of these kinds of people and it's the only county in the United States that has more than 50% of the households on food stamps. It is really very poor and very dependent and it is in counties like that that one expects very little political participation and it is, in fact, one in the Salamon study, for instance, and it comes out near the bottom in terms of political participation. It just doesn't participate. There were four majority black counties who had less than 50% black turn out in 1971, that I can recall, Tunica, Quitman, Sunflower and Leflore. Those are all delta counties; those are all counties with high numbers of people on welfare, high numbers of people who are farm laborers. In that category, they are very dependent, scared to go down. It's not necessarily an overt action of somebody to keep them in their place but it's kind of an overall more subtile [sic] societal pressure as they see it.

[37] Q. Are you familiar, have you studied the problem of electoral or political means of diluting minority or black voting strength?

A. Yes.

Q. In your view, how would you define dilution of black voting strength. What does it mean?

A. Can I give you an analogy first?

Q. Well, give us a definition first.

A. O. K. It is the placing of any definable community of interest within a larger body so as to make that community of interests use irrelevant to any political outcome.

Q. We're speaking now of racial dilution. Would you define that in terms on how that occurs on the basis of race?

A. That occurs on the basis of race where you take a predominantly black area and pair it with a predominantly white area that is of larger population so that the total—within the total the black population is too small to have a reasonable impact on the election.

Q. O. K., now we're speaking in terms of dilution of vot-

ing strength, and that's the thrust of this lawsuit. How would we define voting strength. What, in your view, is the best definition of voting strength in the community? What factors are the most important? In other words. .

A. Well, I'd—I think there's only one factor.

[38] Q. O. K., what is that, sir?

A. That factor is numbers. Now, there are other minor factors—how many, what percentage are the blacks within that particular voting district and when I take the factors that I've been speaking of, in terms of registration, turn out, spoiled ballots, etc., it is my belief that unless a community has—a voting community has 58% black voting age population, that it does not have an effective working electoral majority and that therefore given the racial block voting patterns that exist, the great likelihood is that they will lose the race if they do not have 58% black voting age population, and I based that. .

Q. O.K., let me ask you how you arrived at the 58% figure?

A. O. K. What I'd—what I'd do is I'd compute the differences that we talked about before in terms of registration, turn out, spoiled ballots, those three, and I'd factor those as a ratio of one to the other, then apply those to the black and white percentages of voting age population, giving me a new number for each, which I then take a percentage of. If that percentage is 50% or more black, then it's—that would indicate the actual viable optimum or maximum feasible voting majority, and then I'd look to see what I started with and if I start with 58, it comes out above 50%. If I started with 57, 57.43, it comes out below the 50%.

[39] Q. O. K., would you describe how that works for us in actual facts. Let's take a county that is 60% in terms of the black voting age population, and would you describe for us how you arrived at the conclusion of whether or not that county has what we might term a black voting majority?

A. The projected optimum—let me describe what optimum is, first, what I mean by that. I—I'm trying to do what I call a conservative estimate. If you do the very best job of voter registration, if you do the very best job on the voter turn out, if you do the very best job of educating people on the use of the ballot and if everything goes well that day, that's optimum. It's—anything that's a little shaky, you're less than that, so we're talking about not what can normally

be expected to happen but what would happen only if there was great, hard work put into it. We say that in a 60% black voting district. .

Q. Voting age population?

A. Voting age population, we would expect that the white population is already registered at 80% or better; that the best you can do, if you work hard, is to get 70% of the blacks registered, and we anticipate from voter patterns that if it's a significant election and a black/white race tends to mean that it is a significant election, the whites will turn out in sizable percentages and that you've got to work very hard to come within ten percent of what they can turn out. If you [40] work very, very hard, you may turn out 70% of your people and they will turn out 80% of theirs. The IOP indicated that on a state-wide basis there was a 63% black turn out and a 74% white turn out, which is an 11% differential. If we say that that was optimum, 11%, O. K., differential between black turn out and white turn out and that if you educate these people really well then you could keep your spoiled ballots down to 2-3%. Now it's a problem with—with our big election in '71, '75, '79 in that the ballot is enormous so that the chances for error, the chances for slippage are enormous. The most interesting one that I found was in Coahoma County where, for some reason, one of the candidates for the House of Representatives ran as a Republican and there was no Democrat and a black ran against him as an incumbent, which meant the way the ballot was set up that there was a blank spot as you moved down one column. .

Q. Where was the blank spot?

A. In the Democratic column which was first, because there was no Democrat, and so that, uh, a number of people just skipped that office altogether. They thought it was blank because they didn't give a full scan. Both blacks and whites skipped that office so it had the lowest voting participation for that office. So that what I'm saying is that a quirk as how the ballot is set up, if you want clear and educated peoples, they understand it, you're going to have a high degree of people missing an office or missing something and what you have in most [41] instances is a ballot with thirty offices on it and blacks running for ten of them and people in the black community, well, you find maybe two groups in the black community; one recommending that you vote for

every office and selecting the white to vote for in the offices in which no black is offering and others putting out sample ballots, noting only to vote for the blacks, in the offices for which they've offered. But it's confusing, especially when you get into places like Hinds County where you have to go through twelve posts of the representatives and five posts of the senators and to remember that Henry Kirksy was running for Post 11—instead of—I'm just looking for his name, trying to find it.

Q. He was, in fact, Post 5.

A. O. K. Post 5, just trying to find the name is a problem and I have been a poll watcher in some of these places and people will go in and spend enormous lengths of time in that voting place, looking for what they're looking for and come out shaking their heads like they don't think they did a very good job of finding what they're looking for. Why, you can overhear them, standing outside talking to one of the election managers, who is assisting them with their ballot, if they are illiterate, so what happens, the person goes in, spends two or three minutes and finally an election manager notices that nobody's coming back out of that one and sticks his head in and says, "do you need any help?" And the person says, "Yes, sir," sad to say, [42] they'd say, "yes" so he gets in there and he says, "well, who do you want to vote for?" The person says, "I want to vote for so-and-so." "It's right here," you know. So the one pattern emerges that if they say they want to vote for somebody, they point at it and hopefully that's the correct one and they pull the lever, mark the "x" or whatever it is on their procedure. Others, at times, have stood out and heard the man read through the list. All right, for—and just read down every single name in almost rapid fire. All right, and hear the person say yes or no to every name or as often as they could squeeze in yes or no and see them miss some. Just missing them because of the sheer process. What I'm saying is that people who are illiterate especially or who are semi-illiterate, hold great difficulty in dealing with that long ballot.

Q. O. K., sir. How did you arrive at the 58% figure?

A. Oh, is that where we started? (Laughter) Well, as I said, if you do a good job of all these various steps. .

Q. Would you describe the process that you went through?

A. O. K.—I take the percentage black and the percentage

white. I apply it to the percentage of black voting age population, a 70% voter registration, to the whites an 80%.

Q. 70% for who, now?

A. Blacks. 80% for whites and I would do the same thing in voter turn out—70% and 80%, black/white and then [43] add in another factor for spoiled ballots of 3-4% and 1%.

Q. 3-4% for what?

A. 3-4% for blacks, 1% for whites. Arriving then, having factored those with two numbers, so then add and percentagize, O. K.? And that percentage tells me what percentage I would, at optimum, believe a black candidate could get in that voting district, based on the voting age population.

Q. And the result is, for a black candidate to win in a particular district, the black voting age population has to be what?

A. Has to be 58% or better.

Q. What happens in cases where the black voting age population is above 58%? What happens to the black candidates, win or lose?

A. Well, here in 1971, five contested races in districts above 58%—no, four contested races, one wasn't contested, blacks won one of those four. Blacks lost all of the others, the ones below 58%. That is Robert Clark's Holmes and Humphreys County district, he won and in the others—here's where it's the most—on a scale of who is most likely, Clark was first, Coahoma County was second and there was a marginal 51.3% is what I've come up with as an optimum —and after those two districts, there were three people offering in—in—there were actually four people offering in Coahoma, but due to [44] the way the districts are divided up, only three of those had a chance to start with. Of those —of those three, one was extremely marginal, 50.2, something like that.

Q. What figure is that, 50.2? What is that figure?

A. Let me get out a piece of paper here. (Does so.) In the Coahoma-Tunica-Quitman district, which is district, represented as District 11, Coahoma, alone, has 58.7% black voting age population of black.

Q. That was in 1971?

A. In 1971. It's actually the '70 census, which gives me an optimum figure of 51.3. That's for Posts 1 and 2.

Q. That means that under ideal conditions. .

A. Under ideal conditions. .

Q. The black candidate was likely to get 51.3% of the total vote?

A. Of the total vote. Now, O. K., for Post 3, the percentage—the optimum is 49.7. For Post 4, the optimum was 50.7 and those are because of the different combinations of the three counties for the different posts. Now, in fact, what I said was I was using maximum feasible as my criterion when I—because we're talking about things within ranges. If the differential was between black and white registration, is—is by everybody's estimate 10-15%, I took 10 as the differential. If I take the maximum of what everybody estimates state-wide and apply it, rather than the figures I used, which were the [45] more conservative figures, then, the optimum would be for only Holmes and Humphreys to qualify because 59% would then become the cut off point. If you apply that other differential, if you take the 11% registration differential, if you apply each one at the outside of the range then the differential, the breaking point changes from 58 to 59% so that—in fact, Coahoma would come up 49 point something percent rather than 51% as in mine. I had 51%.

Q. Now have you examined these multi-member districts that were part of the court ordered plan in '71 and subsequently inacted by the Legislature, to examine whether or not they lose minority voting strength and the definition you have given?

A. Yes, I have.

Q. What have you found?

A. Several things. One is that only 25 of the 174 seats are in districts that have even a black voting age population majority and that of these, only five of them have a population, black voting age of 58% or more out of the seats.

Q. Would you give that again, please?

A. Five of the 174 seats are contested for in districts which by the 1970 census, had 58% black voting age populations or more.

Q. That means that under optimum conditions, blacks could only possibly win in five seats?

[46] A. Yes, that's right.

Q. Does this include both the senate and the house of representatives?

A. Yes.

Q. O. K., go on.

A. I have looked at some examples. Those are my general conclusions. If one looks at some of the—some of the districts the way they are—Jefferson is paired with Copiah for a house seat, it's representative district thirty-two, for two house seats. Jefferson has a higher than 58% black voting age population; Copiah has a much lower percentage and has more people. When you pair them together, they combine at 51.1% black voting age population, so an optimum percentage of black vote of 43.7, so you've taken a county like Jefferson, merged it with a—a—place with a white majority voting age population in such a fashion that a black from Jefferson would not have a chance to win in the Jefferson-Copiah district.

Q. What is the significance of Jefferson County? Are there black concentrations, significant black voting concentrations in Jefferson County?

A. Yes, Jefferson County has elected 10 or 12 black officials—there are several counties that have done that.

Q. In what positions?

A. At the—well, the city is black-controlled.

Q. What city?

[47] A. The city of Fayette has five black aldermen and a black mayor. There is a black election commission which is elected county-wide; they—there are now two black supervisors, a majority on the school board and it has a black Superintendent of Education.

Q. So, combining Jefferson with Copiah, is there any chance—is it likely that a black candidate could win in that house district?

A. It's totally unlikely.

Q. Are there any other examples?

A. There are other examples.

Q. Do you want to give them?

A. Yes, I would. It's neighbor to the north, Claiborne County, again, has a viable black voting majority as evidenced by the election of county-wide officials in Claiborne County. It is paired with Warren County and, therefore, there is no possibility of electing a black out of Claiborne County. Wilkinson County is another which is paired with a couple of different arrangements so as to dilute it.

Q. Now, in the House, Wilkinson is combined with Amite and Franklin?

A. Um-huh, giving it a voting age—oh, my goodness, I have it down here somewhere—giving it a majority white

voting age population. I don't have the figure right here in my notes.

[48] Q. O. K., are there any other examples?

A. Yes, Marshall County. .

Q. What's the significance of Marshall County?

A. Marshall County is large enough to have a representative all by itself, in fact, probably about a representative and a third, it should be entitled to by population but it is merged with DeSoto County and loses it's identity therefore, because DeSoto County is much larger. DeSoto County should be worth two representatives, roughly and so that the black voting majority in Marshall County is merged with mostly white suburban Memphis-type county so that it has no voice at all in—in who represents the county.

Q. In Marshall County are there black voting concentrations sufficiently large to elect black officials?

A. Yes, there are. There's a supervisor in Beat 4, for instance.

Q. What kind of a supervisor?

A. Black supervisor in Beat 4. There have been other black officials. There's a black coroner.

Q. Are Blacks at the constable and J. P. levels?

A. Yes, they are at the constable and J. P. levels.

Q. In Marshall County?

A. Yes.

Q. Now you have indicated combinations of counties that are in what we call multi-member districts that lose black [49] strength. Are there also multi-member districts that are not multi-county districts where, in your view, black voting strength is diluted under the current plan?

A. Yes. Yes, there are. If I could mention two or three. In Hinds County there are significant concentrations of blacks in Hinds County. Hinds County has a black—34% of the voting age population is black in Hinds County, which means that the black cannot win in Hinds County at large but since there are twelve positions, each one of them worth, what—8%, there ought to be three or four black representatives if there was some parity. There should be three or four black representatives representing Hinds County and the blacks in Hinds County are geographically situated in the community of interest—manner so as that were there single member districts, they could elect members of their own race or at least someone who would represent their interests. The

same could be said for Adams County, which has two representatives, which has Barney Schoby.

Q. What is Barney Schoby?

A. He is a supervisor from Beat 4 in Adams County.

Q. Black?

A. He is black. If you divided up Adams County into two districts, you would, most likely, be able to elect one black and one white from that district which would more accurately reflect the racial composition of Adams County than the current two whites that now exist. Similarly, Washington County, [50] it happens to be paired with Issaquena, but Issaquena is only—well, has so few people in it as to not determine anything by the outcome of the election. I lived in Greenville for about five years and I'm totally familiar with the geography and if you drew a line in the city of Greenville along Highway 82, north of that line would be 90% blacks and south of that line would be 99% white and it's just a clear—pretty clear separation of the races by geography within that and each of them constitute more than enough to elect one representative, however the representatives from that area, from Greenville itself, are concentrated geographically in the southeastern portion of the city, in terms of where they live, and are all white—except for Buddy Newman, who lives way down at Valley Park.

Q. What effect, then, do these multi-member districts in the current state reapportionment plan have upon black voting strength?

A. They dilute black voting strength so that it is my belief and prediction that, all things being equal, there will only be one black in the house or senate next time around, and that black will probably be Robert Clark, coming out of the Holmes-Humphreys district. But all other districts will not be viable. I've done some computations. .

Q. Is this true only on some multi-member districts or is it true of all the multi-member districts?

A. Well, in terms of today's politics, of the [51] realities of today, it is true only of some so that in Tishomingo County it makes no difference because there are only 3-4% black and, you know, how you draw the lines up in the northeast corner of the state isn't going to make any difference on a racial basis as to who gets elected. The whole area is 90% white and it doesn't make much difference. It is of

most critical concern in the areas bordering the Mississippi River.

Q. The river counties of the delta?

A. The river counties and the delta counties and there are some other additional exceptions.

Q. And?

A. There's Noxubee.

Q. Have you done an analysis of the 1971 election results, including the voting age population black and the optimum black vote?

A. Yes, I have.

Q. May I have it, please.

BY MR. PARKER: I ask that this be marked as Exhibit "3" to this deposition.

(Whereupon said table was marked as Plaintiff's Exhibit "3" and appears immediately following this page.)

[Exhibit Omitted]

• • •

[53] Q. I hand you Exhibit "3" which you have just produced, Mr. Barber. Would you tell us what this Exhibit "3" contains?

A. It contains a listing of the districts in which blacks offered for election in 1971, together with the voting age percentage of black population, my projections of optimum percentage of black votes, the percentage of the vote which Charles Evers got in 1971 and the difference between the optimum and the Evers vote.

Q. O. K., and are these counties listed in any particular order?

A. Numerically by their districts number.

Q. Now, let me just put down here column one. Well, let's take the first one—Bolivar and Sunflower. That's—I gather that the same figures apply to both of those counties?

A. No, if you'll go down below in House districts 13 and 14, you'll find them separated.

Q. Oh, I see, that's the Senate, Bolivar and Sunflower's Senate district?

A. That's right, that's a Senate district. .

Q. And that's the Senate district in which black candi-

dates ran that had the highest percentage of the black voting age population, is that right?

A. That is correct.

Q. Does this exhibit indicate—what does it indi- [54] cate as the optimum black vote for that senate district?

A. 46.9%

Q. And what vote did Evers get in that district?

A. He got 38.9%.

Q. And the difference is Minus 8.0?

A. That's right. Now, if you'll look below, you'll find that that difference was primarily in Sunflower County where—so that the differential in Bolivar County was marginal, 4.4, while the difference in Sunflower was 13.0. Sunflower happens to have not registered as well and happened to have a lower voter turn out.

Q. Now do these difference figures, in the extreme right hand column. .

A. Those are all minus figures.

Q. These are all minuses? These figures indicating difference—confirm or refute or have any influence on your calculation of your optimum black vote?

A. They tend to confirm it. It was part of the process of verification. I took my formula and did this. I also took the alternative, using the maximum spread instead of the minimum spread and ran that by all these. When I used the minimum spread—I mean, when I used the maximum spread between black and whites on each of the factors, then I come up with them being a little closer but with five or six of them running over, so Evers got more than five or six if I used the maximum [55] spread, so I—because of the purpose for which I have done my research, want to use that figure which sets a goal slightly above, you know. I want—when I talk about optimum, I want to really talk about what you get if you work your hands off. So this tends to confirm my study, it verifies my study. We've done other verification processes such as matching the Evers vote on a continue from the highest percent to the lowest percent of the vote, matching blacks and taking black populations by the '70 census and running them from highest to lowest and drawing some lines across to see if the blocks of groupings, there is a correlation and there is a definite correlation. I tend to believe that I'm reasonably accurate.

Q. Let me ask you this. We tend to think of Bolivar as a

majority black county, in fact, a population of 61.4%, and in house district 14, Bolivar elects three representatives county-wide. Because Bolivar is a county which is 61% black, we tend to think of Bolivar as a majority black county. In your view and based on your analysis, is it possible for any blacks—is it likely that any black candidate will win in a county-wide race in Bolivar County?

A. It is unlikely.

Q. O. K., would you give us the explanation for that and based on these figures in Exhibit "3"?

A. O. K. Bolivar happens to have a lower percentage of voting age population than one would expect with a 61% over- [56] all population. It has only 53.6% voting age population. When I apply the factors, my optimum black vote percentage would be 46.2%, which is under a majority.

Q. And that would mean that, assuming racial block voting and assuming that the optimum black vote turns out and there's a minimum of spoiled ballots, does that mean that the optimum black candidate would only get the 46.2% of the turn out?

A. That's correct.

Q. And what was Evers vote in Bolivar County in '71?

A. 41.8%, which was the difference of 4.4%, which means it's reasonably close. Now, within Bolivar County, there are—all the county isn't one consistent hole [sic]. Within the county, the strength in terms of numbers is in the Mound Bayou area, the strength in terms of percentage of people registered is higher in that area, the percentage of turn out is higher in that area, and the percentage of people who vote with some consistency is higher in that area. They have, in '67 and in '71, elected a supervisor out of that area whereas they have been unable to do that in any of the other areas of the county. That concentration, primarily bolstered by the fact that Mound Bayou has always been black for a hundred years and has always had their own mayor and some experience with voting for their own mayor has made a substantial difference in the voter behavior patterns in that part of the county as opposed to the Rose Hill [57] area or Shaw, so that there is a significant difference in—in voting behavior in that particular area because of the historic black community of Mound Bayou.

Q. What district is that, by the way?

A. That is supervisor district #3.

Q. What affect [sic] does the provision for county-wide elections of three representatives in Bolivar County have on the black voting strength in district 3, the Mound Bayou area?

A. It determines that strength.

Q. Does this Exhibit "3" indicate the four legislative districts in which it was possible to elect a black candidate in 1971?

A. Yes, it does.

Q. That would be in. .

A. Districts 11 and 16, 1-2 and 4.

Q. And in District 16, Holmes and Humphreys?

A. That's correct.

Q. Then, in fact, only one legislative candidate won and that was in Holmes and Humphreys?

A. Correct.

Q. Do you have an explanation as to why black candidate was not elected in Coahoma or in the district composed of Coahoma, Quitman and Tunica?

A. The easiest one to get out of the way is, of course, for Coahoma, Quitman and Tunica combined. Quitman and [58] Tunica have had very little registration work. They had, also, very small voter turn outs, a very low level of political activity in the black community in Quitman and Tunica County which explains that one.

Q. Could we say that that was the fault of the black community?

A. I—well, I would not say that. I would say this is attributable to the economic dependence levels and the, the—the more rural nature and the more long-lasting effects of past discrimination than in a place like in Clarksdale proper where there has been much more activity to help people work out and overcome the effects of past discrimination. And that's part of what happens in cities or in places that have a significant leader who develops—such as Aaron Henry in Clarksdale, he enabled people, through a variety of activities, to overcome their own problems, to overcome the objective discrimination of their past, so that those civil rights activities played an important part in internalizing subjectively for people their ability to overcome past discriminations. Those things could not occur in places like Marks or Tunica and that makes a significant difference.

Q. Now, have you analyzed the 1971 election for the legislative posts in Coahoma County, Posts 1 and 2 of district 11?

A. Yes, I have.

[59] Q. And have you arrived at an explanation for the loss of the black candidates in those two posts?

A. Right. I alluded to one of the losses earlier and that was the one post—post—I always get post 1 and 2 confused, I'll have to look at that; the one that Aaron Henry didn't run for. .

Q. Post 1, Walter Jones?

A. Right, Walter Jones was the man who ran against the Republican and there was—in—in the Beat 4, Clarksdale precinct, which was virtually all black, there was about a 500 vote difference smaller for Mr. Jones and there was, in the north Clarksdale precinct, I think it was Beat 2, but I'm not quite sure, as I recollect, there was a smaller vote but not quite as much smaller for his Republican opponent, so that one was the one where the way in which the ballot was formulated made the difference.

Q. This was where there was no candidate in the Democratic column, the voters skipped?

A. That's right.

Q. Now, did you analyze the Henry race to determine whether or not there was racial block voting, that is that white voters in white precincts voted for the white candidate and the black voters in the precincts voted for the black candidates?

A. Yes, the white candidate, Mr. Williams, received [60] something like 98-99% of the white vote in the north part of Clarksdale's precincts and Aaron Henry received 95-96% of the vote in the south precincts that are all black; there may be three or four whites that live there, but it's virtually all black, so racial block voting was clearly the pattern that emerged from an analysis of the Clarksdale precincts that were where you can separate by race. The reason, I think, that Mr. Henry lost is that there weren't enough people registered and that that registration slippage was primarily in the rural areas which is plantation country in which there is significant difficulty in the early days of voter registration in getting people to register. So that the period of '65-'66, when, right after the voting rights act [sic], it was easier in cities than in plantation areas to get people to register with the Federal registrars for a couple of reasons: one was fear,

the other was simple distance to the place where the registrar was and therefore lack of transportation, so that there tends to be, in the rural areas of Coahoma County, a smaller voter registration percentage than there is in the city of Clarksdale. Also, there has been a significant out-migration in the Coahoma County area and I think there are a number of registered people on the books who live in Memphis, St. Louis, Chicago, or wherever, and I don't believe that there was—that there were enough registered blacks to be able to elect Mr. Henry, although I think his turnout was quite good.

[61] Q. Now, are you familiar with the publication in which objection has been made as to the racial composition of each of the state legislative districts for the 1975 election?

A. Yes, I am.

Q. Would you identify that publication?

A. It is a study called, "Population of Mississippi Legislative and Congressional Districts, 1970 and Projections to 1975" by Ellen Bryant and Sanabel El-Attau, published by the Mississippi State University.

Q. Is that an official state publication?

A. I'm not sure what the definition of an official state publication is?

Q. Is it published by the State of Mississippi?

A. Yes, It was published by the State of Mississippi, Mississippi State University.

BY MR. PARKER: Let's take a five minute break at this point.

(Whereupon the deposition was recessed for a brief time.)

(Whereupon testimony to the deposition resumed after the break.)

Q. What projections does Ellen Bryant and her co-author make in the publication to which you have referred?

A. She takes the migration and death rate and birth rate, patterns of the '60's and projects them into the '70's, based on statistical formula and comes up with what she projects to be the population of each legislative district mid-way through [62] the ten year period.

Q. In other words, for 1975?

A. Yes.

Q. And is this voting age population or total?

A. Voting age population but she also shows total population but voting age population, yes.

Q. O. K., she does it based on census data; she does a projection of the racial composition of the voting age population for each of the state legislative districts for the house and the senate for 1975, is that correct?

A. That's correct.

Q. Now have you performed an analysis of that data using your formula for determining the optimum black vote?

A. Yes, I have.

Q. Would you hand that to the court reporter.

BY MR. PARKER: I ask that this be marked as an exhibit to the deposition.

(Whereupon said document was marked as Plaintiff's Exhibit "4" and made a part of this record on the following page.)

[Exhibit Omitted]

[64] Q. I hand you Exhibit "4". Would you tell us what Exhibit "4" is, please, Mr. Barber?

A. Exhibit "4" sets forth the black voting age population to the percentage of the total population for 1975 as projected by the Ellen Bryant study and, in a second column, the optimum percentage of black votes for each of the legislative districts in which somebody offered—in which a black person offered to run in 1971.

Q. Now you said that the first column there is—black voting age population as a percentage of the total population, is that as a percentage of the total overall population or a percentage of the total voting age population?

A. Total voting age population.

Q. In other words, so for district 11, which consists of Bolivar and Sunflower Counties, blacks who are eligible to vote or voting age population or 52% of the total voting age population?

A. That's right.

Q. Based on your review of the Ellen Bryant data, are there any legislative districts in which blacks constitute a majority of the voting age population?

A. Yes, there are.

Q. What districts are those? For 1975?

A. For 1975, the voting age population majority—in the senate, districts 11 and 12; in the house, districts [65] 11, 12, 13, 14, 16, 28, Madison alone, and 32.

Q. In each of these districts, is the optimum black vote less than the black voting age population percentage?

A. That is correct.

Q. And that is the result of the factors you have described?

A. That is correct.

Q. Disproportionately lower black voter registration disproportionately lower black turn out and disproportionately higher percentage of spoiled ballots in black precincts or cast by black voters?

A. That's correct.

Q. Have you performed an analysis, using your formula, on the 1975 black voting age population in each of these legislative districts?

A. Yes, I have.

Q. And what were the results of your analysis?

A. The results of my analysis is that the Holmes and Humphreys County representative's district #16 still has an effective black voting majority at 51.0% and that all other districts would fail—would not have a voting majority, an effective voting majority.

Q. What kind of voting majority?

A. You'd have to have 50% or better to win.

Q. Who does?

[66] A. Anybody who wants to win.

Q. Is this racial?

A. Yes, there's no black effective voting majority in any district other than district 16, based on these projections.

Q. Is it likely that any black candidate for a legislative position in the house or the senate in 1975 will be able to win election in any district, other than district 17 for the house?

A. District 16.

Q. District 16 for the house?

A. No, it is not likely.

Q. In each of these legislative districts for the senate or the house, do you know whether or not, in each of these counties and each of these districts, there are substantial concentrations of black population, black voting majorities within the districts?

A. I can't say that for each and every one. I could say that for some of them and would be glad to.

Q. O. K., which ones?

A. O. K. In Bolivar and . . . oh, well, district 11, senate, district 11, Bolivar and Sunflower; district 12, Washington and Humphreys; district 25, Adams, etal. There are—and depending on—well, then district 18, Oktibeha and Noxubee, depending on how it was done, could. There are significant [67] geographical distribution within that large an area, so the answer could be yes there. In Hinds County, they're definitely are. District 22 there is substantial numbers of blacks concentrated. In the house districts, Coahoma-Quitman-Tunica district, there are portions which would have an effective black majority, yes. In Tallahatchie County, no, although with the western portion of the county has a sufficient concentration of blacks, it doesn't have a sufficient population to warrant by itself a representative seat. In Sunflower there are; in Bolivar there are; in Humphreys, yes; in Clay County, no, unless it was—not the way the district is now constituted. Lowndes-Oktibeha-Noxubee, yes, there are, especially in the area in which the three counties come together, near the Tombigbee River, there. In Madison County, yes, there are, especially if you take out suburban Jackson, which is what throws the balance. In Hinds County, there are; Jefferson and Copiah, there are; Pike County, there are not; in Marion-Walthall, there are not, or at least not significant groups of blacks who would be numerically sufficient to also elect—be entitled to a representative as the districts are now constituted. There are other districts, other than these for which the same could be said, namely LeFlore County in both house and senate and that strange four-five county one with Holmes, Yazoo, in the center, which has an effective minority now but would have a majority in part, if it were divided up. Those, I think, are the only two other excep- [68] tions. Let me double check my notes right here.

Q. That would be Holmes, Issaquena, Madison, Sharkey and Yazoo, district 15 in the senate?

A. That's correct.

Q. Elects two senators?

A. That's right.

Q. Now, you mentioned. .

A. I was going to say—the Washington-Issaquena one,

representative of district 15 where it subdivided—and representative district 29, which is Sharkey-Yazoo.

Q. You mentioned the combination of Marshall and DeSoto?

A. Yes.

Q. Is it currently possible for a black to be elected in that representative district?

A. No, it is not.

Q. Are there sufficient concentrations of black population with the black voting majority within that district that would be sufficiently large to have independent representation?

A. Yes. Almost any way you divide up Marshall County, there would be, portions of eastern DeSoto County and western Benton County are predominently [sic] black and any combinations involving those would yield an effective voting majority. It's only when you add the suburban Memphis portion of DeSoto [69] County that you throw it out of whack.

Q. In the house, Wilkinson, Franklin and Amite are combined. Have you done that calculation for that house district?

A. Yes. They have a voting age population white majority but there are pockets—that's not pockets, it's bigger than pockets—there are blocks of people that could, if the lines were drawn differently, elect blacks, yes. Blacks in that particular district—about 45% voting age population in the district as a whole, but Wilkinson County is about 60%.

Q. So this exhibit, Exhibit "4", only covers those districts in which blacks ran for the legislature in 1971?

A. That's right. All these districts will be subsequently divided in some way. Blacks ran in almost all the districts in which it was theoretically possible to run and in some which it was not theoretically possible, according to the districts that existed in '71.

Q. With what result?

A. Everybody lost except Robert Clark.

Q. Were you present during the 1971 regular session of the Mississippi Legislature?

A. Yes, I was.

Q. In what capacity?

A. On what date? Yes, I have something—some notes that, if I can find them—and refer to them.

[70] (Mr. Barber checks briefcase for notes.)

BY MR. BARBER: I found them.

Q. Can you tell me whether or not there was an effort made to obtain state legislative reapportionment providing for single member districts?

A. Yes, there was.

Q. Were you present on that occasion?

A. I was present on that occasion.

Q. Did you observe the proceedings?

A. I observed the entire proceedings.

Q. Could you tell us what happened?

A. Yes.

Q. And when and where?

A. The date was, it was in February, I believe it was a Tuesday, and I believe it was the 23rd. I don't have a calendar in front of me. .

Q. 1971?

A. Yes, 1971.

Q. O.K. what happened? This was on the house side?

A. This was on the house side. House Bill #515 was up for consideration and I had been asked by Representative Robert Clark the week prior, to develop some things for his use in that debate and with his constituency back home to interpret his actions and had done so. We had done a number of calculations on the question of single member districts and a number of [71] looks at House Bill #515 in the form it came to the floor and then wrote—we wrote two things. One was an interpretative piece for them to distribute to the constituency, which I have a copy of, if you want it. The other was two amendments to that, to bring to the floor, the question of single member districts. On that day, I conferred with Mr. Clark, went over the amendments, went over the discussion of the meaning and then I took my place in the south gallery and he took his place on the floor. House Bill #515 was called up for consideration, somebody got up and made amendment #1 and during the discussion, Mr. Clark offered a substitute amendment, which was this document right here.

BY MR. PARKER: I ask that that be marked as an exhibit to the deposition, please. (Whereupon said document was marked as Plaintiff's Exhibit "5" and appears immediately following this page.)

[Exhibit Omitted]

[73] Q. I hand you Exhibit "5". What is that?

A. This is an amendment which was offered as a substitute for amendment #1 to House Bill #515 in the Mississippi House of Representatives.

Q. What did this amendment #1 provide for? The substitute amendment provide for?

A. This substitute amendment provided for single member districts to be determined through a computerized process at the R&D Center, in such a way so as not to dilute the natural geographic grouping of persons on a racial or economic basis.

Q. And what happened to this amendment?

A. It was defeated on a voice vote, overwhelmingly. I would judge, from my observing who opened their mouths and listening to the noise that was perhaps 10% of the people who voted for it and 90% against.

Q. Was a subsequent effort made to provide for single member districts?

A. A subsequent effort was made later on in the debate and that in an amendment offered by Mr. Clark again which is this one right here.

BY MR. PARKER: I ask that that be marked as an exhibit for the deposition.

(Whereupon said document was marked as Plaintiff's Exhibit "6" and appears immediately following this page.)

[75] [Exhibit Omitted]

Q. I hand you Exhibit "6" and ask if you can identify that, please.

A. Yes, this is an amendment which was made on the floor by Mr. Clark to House Bill #515.

Q. This was also the '71 session?

A. During the 1971 session.

Q. During the same debate?

A. Same debate, same day.

Q. What did this amendment, Exhibit "6" provide for?

A. This provided that all those districts which were in #515 that were multiple member districts would be subdivided to make for single member districts.

Q. What reason did Representative Clark give for offering these amendments?

A. Representative Clark was trying to keep the racial question out of it as much as possible, what he feared from his comments, from talking with people, that race was too much of an issue, and stressed constitutionality and rural versus urban questions in his discussion of the amendment. It was during the discussions of the amendment, the floor was a little bit noisy as it sometimes is, and he was not being listened to very attentatively [sic]. Representative H. L., "Sonny" Meredith was up near the podium and went over to Bob, read the amendment over carefully and strode to the podium and asked for the attention of the Speaker and the members of the house and [76] made a little speech. His speech was, in essence, 'this is a very important decision which we are about to make. I'm going to vote against this amendment, but I think we all ought to understand exactly what it means,' and he then explained what the amendment meant in terms of single member districts concept. The amendment was then voted upon and was voted down by approximately the same ratio on a voice vote. The discussion. .

Q. What reasons were given in opposition to Exhibits "5" and "6"?

A. There were no real reasons given.

Q. From your understanding of the debate and of what was said, what would you conclude were the reasons for the opposition?

A. There was—there were two things that predominated in the discussion of all the amendments on the floor, including these and those two factors that came up again and again were, 'can we pass the court', and there was some argument over what would pass the court's eye. And the other was, 'how do we preserve our seats' and I would think that those were the two really open concerns of the House of Representatives on that day. Those concerns took a number of forms, especially the latter concern, in which there were a number of amendments primarily designed to give a post number within multi-member districts

for—that was designed to give the existing member of the legislature some greater security when running for [77] re-election that year.

Q. Is that a post or residency requirement?

A. Well, by post, it does not—there were two varieties offered in the number of instances. One variety was the pure post system which would be elected from your county and live in your county. .

Q. So it's a county residency requirement?

A. The other kind of post was county residency but vote at large in the district so that there were two alternative kinds of post amendments introduced, almost all of which passed, and which the design was clearly on the part of the authors to protect their re-election possibilities and it appeared from the discussion that the thing most fearful about single member district was that these amendments made it unclear as to exactly where the lines would be, where the people—what post a person would be, therefore, eligible for, who you would run against and what your constituency would really be and that this uncertainty, more than anything else, seemed to dominate the minds of the legislators in this and that in an election year.

Q. Have you been asked by Representative Clark to assist him in his legislative duties subsequent to the 1971 session?

A. Yes.

Q. Has Representative Clark attempted to introduce [78] amendments or legislation providing for single member districts since 1971?

A. I don't recall it being put in, you know. It's been in court since that time and we've kind of waited for the court's decision to act. He has put in other election kind of laws but I don't believe he's put in any of this nature, to the best of my knowledge.

Q. In your workings with Representative Clark, have you had an opportunity to observe the legislative processes and the actions taken by the Legislature in Mississippi?

A. Yes, with some—yeah.

Q. During what period of time? When did you start working with Representative Clark?

A. In '68. I've observed legislative sessions quite often, committees sometimes, and had individual discussions or small group discussions with members of the legislature

from time to time, and I think I have a fairly decent feel for the process and the sentiment on the floor of the house.

Q. Based on all your experiences, observations, would you tell us whether or not the Mississippi Legislature is sufficiently responsive or is responsive to the particular interests and needs of the black community in Mississippi?

BY MR. BRYANT: Would you note our objection to. .

BY MR. PARKER: The form of the question? [79] The form of the question or the substance of the question?

BY MR. BRYANT: The substance is our objection.

BY MR. PARKER: You can reserve your objection to the substance, just the objection to the form. Would you answer the question. He didn't object to the form of the question, so you can answer it.

A. Well, O.K. There is some sensitivity about overt racism. There is one instance that I can recall in which one of the members said "nigger" in a debate over work release program last year, in which Mr. Clark felt that his obligation and duty was to stand up and chastise the member for using the word and—but that's the only time that I've been present that I can recall such an overt thing being said. There are a number of issues that get defined in—in a racial manner from time to time and, on some issues, I'm trying to recall a couple, there've been a couple, bussing issues on the floor, a couple of voting rights issues on the floor in which the legislature, the house of representatives has passed resolutions, asking the U. S. Congress or the president to do something about racial problems. Those have tended to pass, to the best of my recollection, with never more than four people voting in opposition.

Q. You were a little vague in your description about [80] the resolutions. Were they resolutions designed to serve the interest of the black community?

A. No, these were resolutions designed to—ask congress to pass something so that there will be no more school desegregation and we can go back to our neighborhood schools, which amendment passed a hundred and something to three or four and I can't recall which. There have been resolutions to have the voting rights act overturned by congress, which have passed, again, overwhelmingly. I can't recall the exact vote, so that on issues that are clear cut like

that where race is a primary factor, Mr. Clark has not been able to muster the support of more than three or four other people on the floor.

Q. To your knowledge, has Representative Clark attempted to introduce legislation that would have served the best interests of the black community which legislation was not passed by the house of representatives?

A. Yes, Mr. Clark has introduced a goodly number of bills and substantive issues pertaining to the interest of the black community.

Q. Could you give us some examples of those?

A. Yes, I could. He has introduced some fair employment practices bills which have died in committee; he has introduced some bills on voting rights which have died in committee; he has introduced compulsory attendance which has always been racially. .

[81] Q. Is that compulsory school attendance?

A. Compulsory school attendance.

Q. What happened to that?

A. Those have all died and clearly in the informal discussions because of race. He has introduced bills pertaining to welfare which have died in committee. He has introduced bills. I recall one, to put a school of social work at Jackson State, which subsequently was placed—the bill died in committee and the school, graduate school of social work was placed in the University of Southern Mississippi rather than at Jackson State.

Q. For the record, would you identify the racial composition of those schools?

A. Jackson State is a predominantly black institution and Southern Mississippi is a predominantly white institution. He has introduced a bill to guarantee the right of every student to attend the public schools, the so-called right to education bill, which has died each time. In fact, he has been unable to pass—to get passed, any of his legislative programs.

Q. Was there one bill that he was successful in securing passage of?

A. Yes, it had to do with fox lures.

Q. Was there another bill dealing with sickle cell anemia passed?

A. Right.

Q. Tell me about the sickle cell anemia bill?

A. It was a bill which Representative Clark developed from a model prepared by a national black caucus of legislators and which he introduced and which subsequently passed to do sickle cell anemia screening in the public schools.

Q. Did that bill permit a racial classification?

A. It allowed the schools to test only the black children, yes, with the presumption that whites did not have sickle cell anemia.

Q. Generally, how has Representative Clark's legislative programs faired?

A. Poorly. I think—he has, even though he's been there eight years now, only been chosen to lead floor discussion once on any bill, although numbers of people who are less senior than him have had more opportunity to take part in that. He has never been named to a conference committee, although others, more junior than him, have. He—he is—he's had some good influences; he brought the first blacks to be pages and has influenced some other legislators to, in fact, have a black page from time to time. He has loosed up a number of things, simply by being the one black there, so that they have to deal with, at least his presence, as symbolical, the fact that there are black people in the State of Mississippi. By and large, he's lost the arguments where he was working hardest for his broader constituency of the black population. He's lost behind closed doors in committees. There is no public record.

[83] Q. Is there a desk beside the desk at which Representative Clark sits?

A. Every legislator in the House of Representatives shares desk space except Robert Clark. There is a vacant, empty seat next to his.

Q. I'm sorry, I didn't hear. .

A. There's a vacant, empty seat next to his.

Q. What objection to single member districts is that it would require counties to be split and the legislative boundaries of the districts possibly would either be within the county or it would cross county lines. From you [sic] experience in Mississippi and based on your extensive knowledge of political organization, economic organization in Mississippi, are there political units or economic units within the State of Mississippi which comprise areas within the county or which cross county lines?

A. Yes, there are.

Q. What units are those?

A. I'll give you a couple of examples which I touched up my maps of. One of the longest historic ones has been the levee district; the Mississippi Levee District and the Yazoo Levee District, which—the Mississippi Levee District cuts through Humphreys County, the Yazoo Mississippi Levee District cuts through the middle of Tallahatchie, part of LeFlore, part of Holmes, part of Yazoo, and the corner of where [84] Warren and Issaquena come together, and this—this map would show those lines.

BY MR. PARKER: I ask that this be marked as an exhibit to the deposition, please.

(Whereupon said map was marked as Plaintiff's Exhibit "7" and appears immediately following this page.)

[Exhibit Omitted]

[86] Q. Would you identify Plaintiff's Exhibit "7" again, please, Mr. Barber?

A. Yes, it is a page from the Mississippi Blue Book and I have added to that page the Mississippi Levee District as indicated by the number "4", and the Yazoo Mississippi Levee District as indicated by the number "5", and have drawn them according to specifications that are found elsewhere.

Q. What is the function of these levee districts? What kind of function do they perform?

A. They have some taxing authority and they were originally put there to build levees and keep the water from flooding out the farmers in the Delta.

Q. Do you have other instances of political subdivisions, state corporations or public units crossing county lines?

A. Yes, I have the consolidated school districts, which this map represents.

Q. O.K. Could you mark the original as. .

BY MR. PARKER: I ask that the original be marked as an exhibit, please.

(Whereupon said map was marked as Plaintiff's Exhibit "8" and appears immediately following this page.)

[Exhibit Omitted]

[88] Q. I hand you Exhibit "8" and ask you to identify that, please.

A. This is a map of the consolidated school districts of the State of Mississippi.

Q. What is the source of information.

A. The source of information is the State Department of Education's designation pursuant to the Mississippi Code. There are two kinds of consolidated school districts here depicted. One is a simple consolidated school district, which is the dividing of a county into two or more consolidated school districts. The other is what is known as a line consolidated school district. .

Q. Are they also called county line consolidated school districts?

A. Well, the Code calls them line consolidated school districts and they cross county lines and examples of those to be found in this case are up in the Lee-Monroe County area, which is the Nettleton line; the Washington-Issaquena-Sharkey area in which you have several of them. You have the western line district; you have the Sharkey-Issaquena district; and you have the Holly Bluff district, and the other example is that in the Lamar-Pearl River area, which I believe it's the Lumberton line consolidated school.

Q. In other instances, the consolidated school districts take up a portion of the county?

[89] A. A portion of the county, ranging from two to six in Bolivar. There are six of them in Bolivar.

Q. So Bolivar is sub-districted for school purposes?

A. Yes.

Q. For election of J. P.'s, constables, members of the boards of supervisors?

A. Right, and judicial districts.

Q. And the judicial districts and the only case in which Bolivar is not sub-districted is for what?

A. For legislative purposes.

Q. For legislative elections?

A. Right, in which they are multiple.

Q. Bolivar is a multi-member district?

A. It is a multi-member district. There are other examples and it's hard to pull them out perhaps but soil conservation districts cross county lines, that's a Code established districting. There are some other districts that

subdivide counties or cross county lines. I don't happen to have maps of them.

Q. Are there towns in Mississippi which cross county lines?

A. Oh, yes, there are towns in Mississippi which cross county lines, I forgot about that. Hattiesburg is both in Forrest and Lamar County. Crenshaw is both in Pinola and [90] Quitman County, and probably some other examples that don't pop into my mind at the moment. There are several. It's very interesting how it works out. When I was looking at the Federal Revenue Sharing disbursements which are first assigned to counties and then to cities as a proportionate county and so that Hattiesburg, for example, gets—Forrest County gets the money and then the percentage of Hattiesburg that's in Forrest County gets a percentage of that money and then Lamar County gets some money and then the percentage of Hattiesburg that's in Lamar County gets a percentage of that money and it works, and it all goes into the pot and it doesn't seem to bother anyone. They just divvy up the money just fine: it doesn't seem to be any problem. But Hattiesburg Municipal Separate School District also crosses that county line, for instance, so that you have that—there's a municipal school district that crosses a county line, and we're talking about taxing. A taxing body, there's a sizeable variance in the appraisal practices and the tax levy in the two counties and the two counties vis-a-vis the city and nevertheless, it seems to work out all right.

BY MR. PARKER: You may cross examine.

CROSS-EXAMINATION BY MR. BRYANT:

Q. Mr. Barber, what courses did you take at Coe College? I believe you said you majored in Political Science?

A. Yes.

Q. What courses in Political Science did you have?

[91] A. You're asking me to go back a good number of years, now. I took some in American Government, in county and local comparitive [sic] studies, in theory and I had some seminar research type courses.

Q. Did you have any post-graduate work in Political Science?

A. Yes.

Q. And what was your graduate degree in, again?

A. I have a theological degree, Princeton Theological Seminary. I did not complete a post-graduate Political Science course. I initiated it and quit because the engine block on my car cracked. (Laughter)

Q. I've seem [sic] them drop out for. .

A. For economic reasons.

Q. Mr. Barber, you've been in Mississippi, I believe you said, ten years?

A. Yes, sir.

Q. Has most of the work in your present field that you're in been more in practical work? Have you had any studies or courses in statistics and voter statistics?

A. It's been practical, applied work, yes and experience more than courses.

Q. You testified as to the role you've played in various workshops, in assisting voter registration and things of that nature. Has most of your time, during the past ten [92] years that you've been in Mississippi, been devoted to that or have you been in a position of a statistician or compiling data?

A. I've been in a position of also compiling data on a variety of other matters and—and putting out reports based on those, mostly in the Health, Education and Welfare area, as well as the voting area.

Q. What percentage of your time, would you say, you devote to compiling data and coming up with various statistics for all these aspects?

A. I'd say maybe 40%—40%—I've never done an efficiency study.

Q. Now, Mr. Barber, you have testified that—I believe you used the percentage of 3%, as the percentage for blacks—of whites voting for blacks, is that correct?

A. That's correct.

Q. All right, now.

A. I used several numbers there. I don't recall exactly my direct testimony. I said that was the maximum that one could expect outside of a few selected areas.

Q. This was whites voting for blacks?

A. That's right.

Q. All right, now, I must have missed—how did you arrive at that figure, 3%?

A. By taking selected all white precincts and seeing how many votes blacks got in those precincts, as a percentage of [93] the total vote in those precincts, and then looking at some virtually all white counties to verify this data. In other words, I might look at it in an all white precinct and say, "well, do whites act differently when they're in a mixed precinct," and see if there is any correspondence, and I find that there is a correspondence, so it tends to verify itself.

Q. Do you know which—how many counties you studied to arrive at this figure?

A. Ten or twenty, somewhere in there. I've looked at—in terms of looking at precinct data, I've done a study in Jackson, McComb, Clarksdale, Greenville, I'm trying to recall, well, where else, in northeast Mississippi in terms of black.

Q. Has this been a continuing study?

A. Yes.

Q. Did you arrive at this recently? I know it's not a firm figure but. .

A. It's a continuing study.

Q. Have you seen any variations from the time you arrived in Mississippi and presently?

A. In that fact? No.

Q. In that particular fact?

A. No significant variation, O.K.? There are some minor variations. As I think I said, there's some north Jackson precincts that vary a bit from south Jackson precincts. [94] There are—and I said—but the one startling example is the coroner in Clay County, who got half the white votes and nobody knows why.

Q. Is that the only situation you've run across?

A. That's the only time, yeah, that it's exceeded 10%.

Q. And I believe you testified that 90-95% black voted for black?

A. Um-huh. In some cases it's much higher than that. We found some precincts where it was 99 point something.

Q. This was the average?

A. My average, right, and we then correlated that with predominant counties to see if that fact verified itself out and it did.

Q. This may seem like a simple question to you, but to me it's not. Maybe it's because I'm not that familiar with

it, but what are the—and you testified to this—to what factors—to what do you look to, rather, to determine how a person voted, be he black or white? In other words, whether a black voted for black or a white voted for white, other than where you have a precinct that is virtually all white or virtually all black?

A. Well, what you do is you take the all white and the all black precincts and you come up with your formula and then you put the two together in a percentage. .

[95] Q. Now how do you arrive at your formula? Let's get real basic.

A. Well, I've gone through that, in direct testimony.

Q. Well, I missed it.

A. O.K. If, in fact, let's take a simple example so we can do it as easy as possible. If, in fact, 95% of the blacks in the all white precincts—in the all black precincts sampled, voted for the black candidate. .

Q. Now how can you determine that?

A. By looking at the results and knowing the—and the census data to know that it is, in fact, an all black precinct. Also by having physically been present at some of them and seen what the composition of their voters were. Looking at their faces. We've determined that 95% of the blacks voted for Evers, let's say, and that in the white precinct across town, 95% voted for Waller. Then we got to a mixed area in which we know the mixture and we then put those two things together in the mixture of the numbers that we know by census data happen to be there and see if it comes close to what the outcome was. If it comes within two or three percentage points of the outcome, then we figure that it is statistically correct.

Q. So you would consider it to be reliable if it were within two or three percent?

A. Um-huh, yeah, so that we do not expect Mr. Evers to get very many votes in Tishomingo County; in fact, he doesn't [96] We would not expect, you know, in some majority black areas, Mr. Waller to have gotten very many votes and he doesn't and they seem to work out roughly approximating the percentages by the formula which I have gone through earlier.

Q. Now I think where I'm getting confused, Mr. Barber, is on these mixed areas. Now, however you determine in a mixed area, what do you have, a certain percentage of blacks

and whites, whether a black voted for a black and a white voted for a white? Now that may be real basic, but I. .

A. All right. Well, there are a couple of—I gave you some statistical probabilities, was my first level of answer, was a statistical probability based on our experience in all black and all white situations and that tends to verify, statistically, we don't know for certain, but it gives us a great deal of probability. Now, the other way in which we have of examining this fact is to field-test some—well, do some field testing. Now one of those is to look at challenged ballots of people who—who voted. They come up and they're told that their name is in the poll book and they are given a challenged ballot. Their name is written on the outside of that ballot and some other data as to the reason for the challenge. Those ballots are then segregated from the other ballots and are counted separately, usually at the—canvassed the following day. You know, within a reasonable period of time. I think the law gives them ten days. Now, what we've done in [97] some instances is go through the challenged ballot, write down the names of everybody that has a challenged ballot and the other data from the envelope and then attempt to find the people, (O.K.?) and determine who they are. Then, I can think of one instance in which each and every challenged ballot was a black person, then when those ballots were opened, the vote pattern would indicate the way in which black people voted that day. In a similar fashion, we have done the same thing with absentee ballots. You take the list of absentee ballots, you attempt to determine who they are. There are instances that I can recall that—where they were all white. You'd determine the race of those people. .

Q. How did you determine the people? Did you go to them or what? Just by their name?

A. By their name and address, on the thing: didn't necessarily go and look them in the eyeball and say, "are you white?"

Q. But from the name and address?

A. The name and address, you felt usually, especially in small towns—now one of these was Hollandale, Mississippi, which is not too hard to figure out who is black and who is white in Hollandale, Mississippi. There aren't that many people there and everybody knows each other; it's pretty

easy to determine by address and by name who is black and who is white on a list of twenty absentee ballets.

[98] Q. And in how many counties would you do this?

A. We've done this for four or five counties.

Q. Four or five different counties, or several counties four or five different times?

A. Four or five different counties. We've not done it extensively but it tended to substantiate the same position, in that the whites voted white and the blacks voted black. And these are people who, as a group, we knew their race, we know there weren't any mixed precincts and, as a group, we knew their vote, even though it was in a mixed precinct and this tended to confirm that blacks vote black and whites vote white.

Q. All right, I believe you testified earlier, Mr. Barber, concerning the low percentage of black votes in, I believe it's district 11, house district 11?

A. Yeah, I said that there are four counties which had significantly low black voter turn outs in 1971. Those counties were Tunica, Quitman, Sunflower and LeFlore. Two of those are in district 11.

Q. Refer to Exhibit "3" if you would.

(Does so.)

That's the '71 data?

A. That is the voting age percentage black voting age percentage. That is correct.

Q. O.K., now, Mr. Barber, this first column is the voting age percentage, black voting age percentage?

[99] A. Correct.

Q. Now how was that—for example, 54.3% for Bolivar and Sunflower, that's district 11, senate district 11, how was that figure arrived at?

A. You take the census data and add up all the people who are eighteen and over by race and compute it.

Q. Well, how do you compute it then?

A. You take and add up all the blacks, well, it happens to be black male and black female and white male and white female; you add the blacks—you add the black male to the black female for each of the two counties into one number; you add the white male and the white female in each of the two counties into another number; you add those two numbers together for a total. You then divide the black by the total and you come up with the percentage.

Q. All right, now how about the optimum percentage of black votes?

A. That's by applying my formula, my—that at minimum, there is a 10% difference between the black registration and the white registration and between the black turn out and the white turn out, and there's a spoiled ballot ratio of 4% to 1%.

Q. All right. This formula that you arrived at, is that based on samplings in strategic areas of the state or is it from the state as a whole?

[100] A. It's done several ways. Again. .

Q. I know that you testified to some of this but. .

A. I begin by looking at samplings of identifiable black and white precincts to get the voting patterns. I concentrate particularly on areas in which we know population, in which there is census data available. We then apply that to other areas to see if it seems to correspond and then apply it to the state as a whole to see whether roughly that is a reasonable approximation of the general voting habits and while there are some differences around the state, this is a general average—average, I guess, is the best term.

Q. When was this prepared, this Exhibit "3"?

A. The sheet of paper was prepared. .

Q. Well, let me ask you—when did you arrive at these figures?

A. Oh, Subsequent—shortly subsequent to the '71 elections and I had kind of updated it from time to time in—as other elections have come along to see if they correspond, so that I'm looking at the same precinct over a period of four elections to see if behavior seems to be changing. And so there have been some modifications of this.

Q. Do you recall in which particular areas you've had to modify this? Have you had to modify it as to, let's say district 22? Hinds County?

A. Oh, no. No, not—when I say—I will take [101] this and I will look at another election and see if it roughly corresponds as I look at particular precincts and I have not seen any significant change. There have been minor changes in voting behavior.

Q. That doesn't affect your formula?

A. That doesn't affect the formula. I was not sure what the—and I'm still not sure until after the '75 elections, what the full effect of the 18 year old vote will mean. I don't

think it's really been tested, so I have some reservation, especially the University communities and in other communities to see whether the absentee ballot law does get utilized. You know, there are those variables that I am not sure, they haven't been law long enough to really solidly say this is what happens. That "X" percentage of college students register at the college and "X" percentage register at home. I don't—I haven't formally figured that out and that's been something that's kind of bothered me in the back of my mind but I haven't had a particularly good place to test it because I don't think the last couple of elections have had a significant turn out. In fact, nationally they are saying that that age group seems to be pretty apathetic. I've seen nothing—I've looked at those areas but I haven't seen anything in those areas that would lead me to change my formula yet. I may, in '75, see some changes occur but I don't know.

Q. Mr. Barber, in reference to Exhibit "4", Plain- [102] tiff's Exhibit "4", I believe you arrived at these percentages based on Ellen Bryant's projected studies?

A. Yes, sir.

Q. What variables were there between the figures arrived at in Exhibit "3" and Exhibit "4"? Do you follow the question?

A. Yes, yes, I do. The variable is, that I think it is, and Ellen Bryant thinks it is, unrealistic to use the '70 census in 1975 as a realistic pegging of where the population is. There has been some movement of population; there is the death rate; there is the birth rate; there is an in and out migration rate; so that she has adjusted her population projections to 1975, based on the most recent ten year period, '60-'70 movement of population, birth and death rate. Those factors then change the voting age population percentage black and white. The rest of the formula is the same.

Q. All right, so everything else remains the same with the exception. .

A. Everything else remains the same.

Q. So, you haven't changed your formula any, which I'm sure you haven't, and you haven't—have you taken into account any changes in just practical situations, for instance, like—I believe you testified that in Coahoma, Quitman and Tunica, there was a—even though it's heavily populated with blacks, that it's a poor, poor voter turn out

and that you [103] cited some reasons for that. Have you seen—in other words, there is a five year span, or less than five years, have you seen many changes, say, like in that particular area where the percentages would possibly be higher as to the optimum percentage of black votes for, let's say, the house district 11?

A. O.K., there has been some growth and political sophistication in that area. If you note that they fall well below the—what I pegged as optimum and that—so there's a lot of room for growth, one might say, so that any growth would tend to bring them closer to the optimum. However, I also note some factors which would lead me to believe that they—well, some negative factors. .

Q. That were not present when you. .

A. Well, they—that are, at least, continuing to occur in that, for instance, economic stability is—is one factor. During the month of January, those counties experience, those three counties experienced in aggregate an increase in unemployment over December of more than 100%. Now that leads me to believe that there is economic instability in that area, which would be a negative factor toward any growth and political sophistication. My feeling is that the two are interrelated, that economic stability tends to correlate with voter participation patterns.

Q. Did you view any of these other districts which are—as far as that aspect is concerned, unemployment, I mean [104] recently, as of January, say?

A. I just completed—I'm trying to do a study relating—correlating some unemployment things with some food stamp problems the people are having and I don't have those notes at my fingertips, they're on my desk, but a number of the counties with—that were far from the optimum, have had great changes in employment, had them up and back down. These would have been occurring mostly in these smaller towns where there's not been any steady growth. You'd have the establishment of a plant which would hire 200-300 people and then six months later, they will lay off half of those. That creates instability, maybe an overall growth in manufacturing employment, but many of these small towns had a growth period around 1970. I think it clustered around that year, and are now experiencing a decline so that a number of persons are significantly

having an unstable situation in their economics, especially these small towns and smaller county seats.

Q. In terms of percentages, how would something like that one isolated aspect affect the optimum black voting percentage?

A. Well, it's my feeling that it makes it harder to reach your optimum. You see, the optimum is that if all conditions are fine and you work hard and if you're having economic instability in your community or if some other situation is occurring that causes you to have less than optimum capability, [105] your actual voter participation pattern will decrease.

Q. Would that increase or decrease employment of an appreciable amount, 100% in Coahoma County affected a tenth of a percentage point or two-tenths or three-tenths, as far as the optimum percentage of black vote?

A. It's not going to affect the optimum percentage, but it's going to affect the real percentage. I'm going to hold to my optimum, (O.K.?) because optimum is saying if all things work well, (O.K.) not taking into account day to day differences that occur in that particular community.

Q. O.K., but how would it affect the black. .

A. I think that it realistically would affect the black voter participation in the degree larger than the actual loss of jobs because it creates, in the community, a sense of instability. I've not done any factoring to see whether a hundred jobs affect five hundred people or two hundred people, in terms of where . . but people are worried about it. Makes people act a little more cautiously, if two of the relatives are out of work, you know, even though they are just distant cousins, they know about it and they're a little more cautious about taking the chance that they might lose their job.

Q. Let me ask you just a couple of questions in regard to Exhibit "7" and "8". Were these the only—as you have listed on the side, crossings for dividing counties and crossing county lines—how many other situations are you [106] personally familiar with where counties are divided for political subdivisions?

A. I mentioned the soil conservation districts. Counties are divided for judicial districts. I also mentioned cities, we talked about cities that crossed county lines and all I

did was attempt to see if there was a precedent. I didn't press for. .

Q. Let me ask you this question, then. Based on. .

A. I didn't do an exhaustive study to see how many examples there are. I'm sure there are more. I know that I've looked at lists of districtings and there are gobs of districts.

Q. Well, can you—based on your knowledge and the studies that you have or made in the political science field, would you say that there is a direct analogy between consolidated schoo' districts and legislative reapportionment plans? In other words, if you could do it in one, would you have as few problems in a situation where you had consolidated school districts as if you did it for the state?

A. I would think that you would have less problems with legislative reapportionment than you would with consolidated school districts.

Q. What reason would you cite for that?

A. I'd cite in that consolidated school districts tax at independent rates and expend money. They have budgets and money and their daily ongoing functions and they have to [107] operate school busses and, you know, there's a whole range of things that they have to do that have to be figured out. They, not only have to hold elections by some different kind of methodology, they hold them on a different day and they hold them in different voting places and have their own separate system, which they've established. They run that election process different from any other kind of election there is in the State of Mississippi that I know of and they've done that, which is more difficult, because they have to set up a whole independent process for that. Not only do they do that, which is not all the differences it'd make in terms of the legislative thing, but they have the financial thing. They have to figure out whose property, some people's pieces of property is cut across by these particular lines and who is going to assess the property, what tax rates are going to be applied to the property, they don't all apply the same tax rates; how are they going to equitably and justly raise the taxes for that particular self-contained unit. They have to run their schools on those taxes and they have to figure out a way to do it, and that's a whole lot more difficult than running for office for a legislative seat. They

also have to spend their money to serve all the constituents of that geography, so I think they have—it's much more difficult to have consolidated school districts than it is to have—crossing a county line than it is to have a legislative district cross a county line.

[108] Q. What problems do you see, if any, in having legislative districts cross the county line? Do you see any practical problems in that?

A. Well, I think the only problem is tradition.

Q. That's the only problem?

A. Yes. You know, it's traditionally—Hinds County has had "X" number of representatives who have supposedly represented the entire county and for a legislator to adjust to serving his 18,171 people instead of trying to serve 200,000 or whatever it is, is an adjustment for him. I think it's a great adjustment, an adjustment he ought to make. I think that if legislators serve a realistic community of interest, that they will better represent their constituency than serving the more varied constituency of a larger nature that they now have. I think that—my personal, political prospective is that at the effective level of representation, communities of single interest ought to be represented and it is—ought to be a democratic dialogue at that policy-making level of vested interest communities and that single member districts enhances this possibility and that multi-member districts tend to water down and give you middle-of-the-road kinds of candidates who wish to appeal to everybody and anybody and don't represent, therefore, any of their constituency, in attempting to represent them all, so politically, it's appealing to me in terms of giving us a more realistic balance in the legislature.

[109] BY MR. BRYANT: I have no more questions.

BY MR. PARKER: O.K.

RE-DIRECT EXAMINATION BY MR. PARKER:

Q. Let me just ask, let me just proceed a little further on two questions. Let me just pursue, for a moment, the line of questioning that Mr. Bryant was pursuing. You have indicated that there is a relationship in the study and analysis of voter participation and voter turn out between—in regard to the voters concept as to whether his vote will make a difference and we have had other testimony and

other witnesses, PhD's in Political Science who have testified that national studies of 1948 indicate that whether a voter will be able to influence the outcome of an election is most frequently the major factor in his decision as to whether or not to go to the polls. Would you agree with that?

A. Yes, especially where it's difficult for a person to get to the polls, which would be in your rural areas where the person may not have a car and has to go to some effort in order to get there.

Q. I think Mississippi, in the past, indicates, Mississippi history and your testimony, indicates in the past, black people have been denied access to the political process. If the present system of multi-member districts were continued in effect for the 1975 election, would this have any affect [sic], in your view, on political participation by black people in the [110] legislative elections?

A. Yes, I think it would.

Q. What affect [sic] would it have?

A. I think that if this is continued, that black participation will go down. That people, as I talked to them, asked this question of what was the struggle all about in the '60's, what did we gain from that. People are asking questions today that are really questioning whether it was worth it, in the struggle to gain civil rights because they don't see, in their individual lines, the substantial kinds of differences they would like to see, the gap is still there in services and so on and they are becoming disillusioned with victories which don't yield anything of substance. And that's not a scientific study, you know, but in talking to people at the grassroots level. I find people asking these questions. People seeing that going out and voting again and again and again and never electing anybody, it discourages them and they don't want to go out and vote any more. I think there are some places where this problem has already set in, where people have come close numbers of times and failed and they have become quite discouraged and saying out loud in their community meetings, "the white folks are going to run it anyway, no matter what we do, we're going to lose the election, why should be worry."

Q. Now if we had a system of single member district, that, in terms of your optimum vote formula, gave black candi- [111] dates or any candidates favored by black voters

in representing their interest, leaves more opportunity to be successful, what affect [sic], in your view, would this have on the turn out and participation by black voters?

A. I think it would increase the black voter turn out. It would do so for two reasons. One is that it would heighten the chance of winning and two, it would make smaller the area that the candidate has to cover, which I think is quite important and would make the candidate's relationship to the constituent, the potential voter, more direct rather than one to 200,000, it's one to 13,000, and, you know, that, you know—I'd rather try and shake hands with 18,000 people than with 200,000 people. And candidates would concentrate and vie for the black vote, at any rate, in such a way that it would make the general atmosphere of the election heightened and it would increase the turn out, therefore.

Q. Do you have any political aspirations. Do you personally plan to run for. .

A. There are three things I've said I'm never going to do: write a book, run for office and I can't remember what the third—go, go back to school for any extended period of time, and, no, I do not intend to run for office. You can hold me to that.

BY MR. PARKER: Any further questions?

BY MR. BRYANT: No more questions.

[112] [*Deponent's Certificate Omitted*]

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[113] [*Court Reporter's Certificate Omitted*]

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Plaintiffs Exhibit P-17
May 7, 1975

Transcript of Proceedings

United States District Court
Southern District of Mississippi
Jackson Division
February 7, 1975

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[64] BY MR. PARKER:

Plaintiffs call Dr. David Valinsky.

DAVID VALINSKY, called as a witness for and on behalf of the plaintiffs, was sworn and testified as [65] follows:

DIRECT EXAMINATION

BY MR. PARKER:

Q. Dr. Valinsky, would you state your name and address for the record, please, sir?

A. David Valinsky.

Q. Would you spell your last name, please, sir?

A. V a l i n s k y. 5 Laura Lane, Scarsdale, New York.

Q. Is that your home address or your office address?

A. That's home address.

Q. Would you give us your office address, please?

A. 155 East 24th Street, New York, New York.

Q. What is your present occupation?

A. I am a professor and Chairman of Department of Statistics at the Bernard N. Baruch College of the City University of New York.

Q. Would you spell the name of the college, please?

A. Bernard N. B a r u c h.

Q. How long have you been employed in that capacity

A. Since 1940 except for the war years.

Q. Hand you a document and ask you if you can identify it, please, sir? I have a copy for members of the Court.

A. This is a vita or resume of my experience.

Q. Does that vita correctly state your educational back-
[66] ground, sir?

A. That's right, sir.

Q. Does it state the prior positions that you have held in—

BY JUDGE COLEMAN:

I have heard no objection interposed to introducing this gentleman as an expert if that's what you are offering him for. Why don't you ask him what field he is an expert in and if we read this resume we won't take any more testimony before tomorrow, because you've got a very lengthy, very detailed recitation there that ought to be adequate within itself.

BY MR. PARKER:

Ask that the resume be admitted into evidence as plaintiff's exhibit 16.)

BY JUDGE COLEMAN:

It will be so admitted.

BY MR. PARKER:

Sorry, plaintiff's exhibit 14.

(Above referred to resume admitted in evidence and marked as plaintiff's exhibit 14.)

BY MR. PARKER:

Q. Dr. Valinsky, would you state your experience and background in working with statistics and census [67] material?

A. I have been a statistician for more than 35 years primarily by the emphasis has been in the area of survey sampling, sampling design, and use of census materials. For more than 20 years I have selected carefully scientifically designed samples based upon census data. In addition to that I have applied it in one reapportionment case in Alabama in Simms versus Amos case.

Q. Would you describe your work in the legislative redistricting plan in Alabama?

BY JUDGE COLEMAN:

I must say I just don't think that's going to help us at all about what he did in Alabama. Let's just get down to our Mississippi case, please.

BY MR. PARKER:

Your Honor, we intend to establish him as an expert in the state of redistricting.

BY JUDGE COLEMAN:

As I have just said, I have heard no objection to the proposition that he is an expert, and the Court will accept him as an expert so we may proceed from there.

BY MR. SUMMER:

If the Court please, we certainly, we have made no [68] objection simply because we have heard nothing that would establish him as an expert, and we were simply waiting until they tried to establish him as an expert.

BY JUDGE COLEMAN:

Are you prepared to argue now that this man is not an expert in the field of statistics and census and so forth?

BY MR. SUMMER:

I haven't completed reading his statistical bureau and I insofar as it relates to this type of reapportionment case I have only heard he has had one experience which I don't think establishes an expert at all.

BY JUDGE COLEMAN:

Well, I think with all due fairness to both sides we won't hesitate on that. We will go ahead and admit his testimony as an expert and see what help he has got to give us, if any, but I don't care for him to bolster his testimony about all of his exploits in Alabama. I want him to tell us about Mississippi.

BY MR. PARKER:

Well let me then just offer to the Court, Dr. Valinsky prepared the state legislative reapportionment plan for Alabama, the single member district plan that was accepted—

[69] BY JUDGE COLEMAN:

Didn't he just testify to that?

BY MR. PARKER:

Well, Your Honor, I believe he was about to testify to that.

BY JUDGE COLEMAN:

I thought he said he prepared the plan presented in Amos V.—

BY MR. PARKER:

(Interrupting) Simms versus Amos.

BY JUDGE COLEMAN:

Yes.

BY MR. PARKER:

And was accepted by the Supreme Court.

BY JUDGE COLEMAN:

Well, I don't know about that. The Supreme Court affirmed that case in a memorandum opinion as I recall it.

BY MR. PARKER:

Q. Dr. Valinsky, have I requested you to prepare a single member districting plan for the Mississippi Legislature?

A. You have, sir.

Q. Let me hand you a document and ask you if you can identify it? Copies for the members of the Court.

[70] BY MR. SUMMER:

If the Court please, and so I won't be bothering the Court,—

BY JUDGE COLEMAN:

You are not bothering the Court, but I have been in the Courtroom 35 years and I just don't like to waste time on quibbles of any kind and that's all I'm trying to do here.

BY MR. SUMMER:

I want to enter one continuing objection to this man's testimony in regard to his preparation of a single member plan or any other type plan at this time, and I will shut up.

BY JUDGE COLEMAN:

Well, Mr. Attorney General, it's accepted only conditionally because obviously it's altogether out of order. The Mississippi plan as it presently exist is valid so we will just have to let it come in with that understanding. Okay, Mr. Parker.

BY MR. PARKER:

Q. Can you identify that document, Dr. Valinsky?

A. Yes, sir. This document is a plan of reapportionment for the House of Representatives of Mississippi as prepared by me.

BY MR. PARKER:

[71] Ask that that be admitted as plaintiff's exhibit 15.

BY JUDGE COLEMAN:

It will be conditionally admitted for such use as the Court may need to make of it in the ultimate disposition of this case.

(Above referred to document received in evidence and marked plaintiff's exhibit 15.)

BY MR. PARKER:

Q. Dr. Valinsky, let me hand you another document, copies for members of the Court, and let me ask you if you can identify that document, Dr. Valinsky?

A. This document indicates a reapportionment of the state senate seats in Mississippi which I have prepared.

BY JUDGE COLEMAN:

It would be admitted under the same conditions as the house plan in case it should ultimately need to be considered.

(Above referred to document received in evidence and marked plaintiff's exhibit P-16.)

BY MR. PARKER:

Hand the witness exhibits 15 and 16, please.

Q. Dr. Valinsky, how are these proposed districts for the Mississippi House of Representatives and the [72] Mississippi Senate, how are they defined?

A. What was the last word, sir?

Q. How are the districts defined?

A. These are designed as single member districts, they are designed in terms of census, descriptions of counties, supervisors' districts, enumeration districts and census tracks.

Q. I see on these descriptions the abbreviation S D. Would you describe to the Court what that abbreviation is?

A. Supervising District as indicated in the census or, various census maps and census material.

BY JUDGE COLEMAN:

You're talking about county supervisors—

BY THE WITNESS:

(Interrupting) That's right.

BY JUDGE COLEMAN:

(Continuing) of the five supervisors districts?

BY THE WITNESS:

That's right, Your Honor.

BY JUDGE COLEMAN:

Well, now for example you've got figures down there for

Hinds County. Were you aware when you put those figures there that those beats were no longer in existence, and that the census takers took the census [73] from the wrong areas?

BY THE WITNESS:

That's right, Your Honor. With regard to Hinds County the newer descriptions of the supervisory districts were considered fully in drawing up the plan.

BY JUDGE COLEMAN:

What did you do to determine the validity and legality and the authenticity of the supervisors lines which a census enumerator purported to use?

BY THE WITNESS:

Your Honor, I didn't test the validity, uhh, the assumption is that the Census Bureau usually checks with local officials and once it becomes an official document various documents which I have with me it's considered basically the official description of the area.

BY JUDGE COLEMAN:

Of course if one had relied on that assumption with reference to Hinds County he would have been very gravely misled, wouldn't he?

BY THE WITNESS:

In 1970, sir, I have a, uhh, Your Honor, I have a later document which defines the new enumeration districts based upon the new definition of the super- [74] visor districts. These were used in the preparation of the plan.

BY JUDGE COLEMAN:

To say the least of the matter, you took it as the Census Bureau took it and relied upon the data which they compiled purportedly in the exercise of their official duties?

BY THE WITNESS:

With one exception. The, the district lines that were defined by the Jackson Planning Board was used as the base and related to the census information and enumeration districts, which related to those lines.

BY JUDGE COLEMAN:

Yes.

BY MR. PARKER:

Q. Let me, in your exam, in your examination, in your examination of census materials, Dr. Valinsky, did you find that the census used the pre 1969 Hinds County Districts?

A. That's right, sir.

Q. And what steps did you take to correct that error made by that oversight made by the Bureau of the Census?

A. I requested from your office to obtain from the [75] Jackson Planning Board the latest definition which was used as a basis for the plan.

Q. Of the new supervisor's districts?

A. That's correct, sir.

BY JUDGE COLEMAN:

Now let's see if I understand that correctly. You mean the plan that the Board of Supervisors later adopted and which is now under challenge itself in the Federal Court?

BY THE WITNESS:

That's right, Your Honor.

BY JUDGE COLEMAN:

I think we understand it.

BY MR. PARKER:

Very well.

Q. Now you also on your description have the definition, have the abbreviation E D. Would you describe to the Court what the abbreviation E D means?

A. E D is Enumeration District. These are geographical subdivisions with approximately 1,000 population each. It varies from E D to E D.

Q. And how are these geographical subdivisions defined by the Bureau of the Census?

A. They are prepared by the Bureau of the Census. The boundaries are usually determined with local officials.

[76] Q. And what determines the boundaries of these enumeration districts?

A. They usually follow either natural or topographical or certain geographical boundaries which are well-known roads, highways, county lines.

Q. Do you have maps that reflect boundaries of your proposed single member districts of the House and Senate?

A. I do, sir.

Q. And from whom did you obtain these maps?

A. From the Bureau of the Census.

BY MR. PARKER:

One moment, Your Honor.

Q. Let me hand you, Dr. Valinsky, copies of maps which purport to be senate maps, I'm sorry, census maps, and ask

if you can identify it. Dr. Valinsky, can you identify these maps?

A. I can, sir. Do you want each group to be looked at, sir?

BY JUDGE COLEMAN:

No, sir, just tie one big string around the whole bundle and put a tag on it.

BY MR. PARKER:

Q. Just tell us what they are.

BY JUDGE COLEMAN:

[77] We've got more to do than—

BY THE WITNESS:

(Interrupting) They consist of county maps prepared by the Bureau of the Census. These county maps include the various supervisory districts as well as census track enumeration district boundaries. In addition to that, a number of place maps, and place maps being city maps, also prepared by the Census Bureau under the previous conditions mentioned are also included.

BY MR. PARKER:

Q. And so you have obtained these maps from the Census Bureau, and what did you do with these maps? What did you draw on them, if anything?

A. I superimposed the selected, the prepared districts, both House of Representatives and for the Senate as indicated the two previous documents.

Q. And in each case did you adhere to the description as contained in plaintiff's exhibits 15 and 16?

A. Entirely correct, sir.

BY MR. PARKER:

Ask that these be admitted as plaintiff's exhibit 17, Your Honor.

BY JUDGE RUSSELL:

I understand that that is maps of 82 counties there?

[78] BY MR. PARKER:

Yes. This is the Valinsky plan for the House and the Senate based on census—

BY JUDGE RUSSELL:

Does the map contain 82 counties I mean, different supervisors beats and all of that?

BY MR. PARKER:

Q. Could you explain that, Dr. Valinsky?

BY JUDGE COLEMAN:

Does this cover the entire 82 counties in the State of Mississippi?

BY THE WITNESS:

This covers all 82 counties, sir.

BY JUDGE COLEMAN:

All right.

BY MR. PARKER:

Q. Is that for the House and for the Senate?

A. Both for the House and for the Senate.

Q. For purposes of visual illustration of your proposed districts have you drawn the outlines of these proposed districts on statewide census maps?

A. I did, sir.

BY MR. PARKER:

Ask that these two maps be handed to the witness, please.

[79] BY JUDGE COLEMAN:

I believe we can read the maps, gentlemen. Just let them be admitted into evidence and we will get back in the room and spread them out on a table and look at them. I have been looking at maps in this case now for nine years.

BY MR. PARKER:

Q. Can you identify those, Dr. Valinsky?

A. Yes, sir. These are summary descriptions of the single member districts prepared for the House of Representatives and the Senate in the State of Mississippi.

BY MR. PARKER:

We have copies of these maps, Your Honor, prepared for the benefit of the Court.

BY JUDGE COLEMAN:

Why don't you put those off to the side there somewhere, Mr. Marshal. We've got about all we can hold up here for the present.

BY JUDGE RUSSELL:

You offered that as plaintiff's exhibit 18?

BY MR. PARKER:

Yes, Your Honor.

(Above referred to document received in evidence and marked plaintiff's exhibit 18.)

[80] BY MR. PARKER:

Q. I gather, Dr. Valinsky, that in drawing these plans you

attempted to equalize the population among the legislative districts for the House and the Senate?

A. That's correct, sir.

Q. What goal did you follow or attempt to achieve in terms of equalizing population?

A. I was requested to maintain three percent deviation and within six percent variance.

Q. Now would you define for the Court, if you would, please, sir, when you say deviation what you mean and when you say variance what you mean?

BY JUDGE COLEMAN:

We have been through that in all of our prior decisions so you don't have to explain that to us.

BY MR. PARKER:

Q. Okay, deviation is the deviation from the norm and variance is the per cent of deviation?

A. That's correct, sir.

Q. How successful were you in achieving your goal?

A. In the House of Representatives reapportionment that we maintained a variance of 5.9. The maximum deviation was 3.9 on for the largest county—

BY MR. PARKER:

(Interrupting) Is that 3.9 or 3.09?

[81] BY THE WITNESS:

3.09 and a minus 2.30 percent for the smallest county, however—

BY MR. PARKER:

Q. (Interrupting) Is that on the House side?

A. That's on the House side.

Q. So that would be a?

A. A 5.39 variance. Another way of looking at the same figure, sir, is that the average deviation for all of the 105 districts was 1.2 percent.

Q. How many districts?

BY JUDGE COLEMAN:

May I interrupt here to get a little information? Who told you to hold it to three percent?

BY THE WITNESS:

The lawyer for plaintiffs, sir, in a letter addressed to me.

BY JUDGE COLEMAN:

You mean Mr. Parker?

BY THE WITNESS:

That's correct, sir.

BY JUDGE COLEMAN:

In doing that have you studied the decisions of the Supreme Court which infer that as much as 15 percent was permissible if it is done for the reasons set [82] out in Mayhan V. Howell? I just wondered what the philosophy for this very narrow three percent margin was?

BY THE WITNESS:

I'm not expert in law. I read parts of some decisions. I am aware of the Mayhan case. The attempt was to consider several major criteria, Your Honor, and this is one of the considerations, and one very, very important consideration was the maintenance of county lines which I feel that we have been quite successful in obtaining.

BY JUDGE COLEMAN:

Does your plan break any county lines?

BY THE WITNESS:

That's correct, Your Honor.

BY JUDGE COLEMAN:

It does?

BY THE WITNESS:

That's correct, Your Honor.

BY JUDGE COLEMAN:

How many?

BY THE WITNESS:

Uhh, I would say in the House of Representatives 40 percent of the county lines are maintained fully. In the Senate reapportionment more than two-thirds of [83] the county lines are restored, the reason why I say two-thirds, Your Honor, is that in three or four cases only one additional enumeration district a break was made in order to maintain the small deviation.

BY JUDGE COLEMAN:

You say that although you broke 60 percent of the county lines you think that was a very successful preservation of county lines?

BY THE WITNESS:

Uhh.

BY JUDGE COLEMAN:

That's what I understood you to say.

BY THE WITNESS:

I would say that in comparison with the accepted plan in Alabama as it was it was an improvement over the Alabama plan.

BY JUDGE COLEMAN:

Is the Alabama plan which you participated in, is it still in effect in Alabama?

BY THE WITNESS:

It has been implemented, Your Honor.

BY JUDGE COLEMAN:

In what respect?

BY THE WITNESS:

[84] Each of the districts have been implemented within the structure and election has been executed based upon the specific plan as submitted.

BY JUDGE COLEMAN:

Well, sir, I understand that about like I would Einstein's theory. I think you better come back and tell me again. Are you saying that your plan is intact in Alabama today, or that it has been modified?

BY THE WITNESS:

From what I understand, Your Honor, the only modification was one enumeration district boundary where they felt that a division in a swamp would be better than the census lines, otherwise it has been intactly implemented.

BY JUDGE COLEMAN:

Was that done by the legislature, this modification, or by the Court?

BY THE WITNESS:

By the Courts. They appointed, I understand, a Federal Magistrate.

BY JUDGE COLEMAN:

Thank you. You may proceed.

BY MR. PARKER:

Q. So on the house side, Dr. Valinsky, the population is equal to a variance of, what was the figure?

[85] A. 5.9 percent.

Q. 5.39?

A. 5.39 percent.

Q. And on the Senate side what are the deviation and the variance, if you would, please, sir?

A. The deviation was 1.73, I believe, I believe that's on the plus side, 1.66 on the minus side, a variance of 3.9 percent with an average deviation over the 52 districts of .68 of 1 percent, sir.

Q. So the average deviation on the Senate side is .68 percent.

A. That's correct, sir.

Q. And what is the average deviation on the House side?

A. 1.2 percent.

Q. Have you calculated the population ratios between the largest and the smallest districts on the House and Senate side?

A. I have, sir. In the House the ratio of the largest district to the smallest district is 1.04 percent.

Q. To what?

A. To 1. With respect to the Senate districts the highest district ratio to the lowest district runs a 1.02 percent to 1 percent.

Q. Is that, are those percentages or is that a ratio?

A. That's a ratio.

[86] Q. Okay. Let me hand the witness, please, plaintiff's exhibit number 16, do you have 16, Let me refer you to Senate District number 18. Would you read the percentage—

A. (Interrupting) What number, sir?

Q. Senate District number 18 on the Senate plan?

A. I have that, sir.

Q. Would you read the percentage of deviation in Senate District number 18?

A. 1.66 percent.

Q. Is that the maximum percentage of deviation on the Senate side, maximum plus?

A. That's correct, sir.

Q. Now let me ask you to refer to Senate District number 52. Would you read the percentage of deviation?

BY JUDGE COLEMAN:

Could I ask him a question there just for information?

BY MR. PARKER:

Sure.

BY JUDGE COLEMAN:

Since you are talking about 18, do you propose to put all of Clay County in 18 and three beats of Oktibbeha?

BY THE WITNESS:

That's correct, sir.

[87] BY JUDGE COLEMAN:

Which, which division of that district has the majority of the population, the voting strength, is it the three beats in Oktibbeha or all of Clay County?

BY THE WITNESS:

I can check it out with my worksheet, sir, Your Honor,—

BY JUDGE COLEMAN:

If you will just give us a letter on that, if you don't mind, at your first convenience. What I'm thinking about on this business of breaking county lines, and you have broken many of them in an effort to stick to this three percent rule, if you take two beats out of one county and hook it up with five beats in another county and then theoretically you've got everybody participating in the election of representatives, but the truth of the matter is, and we all know it, from common sense and long experience the people over on the big side of the county line will generally keep the representative and the ones left on the other side just might as well not have any at all. I lived in that for years and years and years in a senatorial district composed of two counties where they had a gentleman's agreement that one county would elect one four years and the other [88] county would elect the next four years, and it was just human nature that when my county didn't participate in the election of the Senator we didn't have very much attention during that four years, and I am sure the people in the other county felt the same way when we elected one. Now that bothers me about shattering these county lines and so on. Later on I want to ask you about just how much consideration you gave to these questions of traditional policies and so forth that went into this.

BY THE WITNESS:

Yes, Your Honor.

BY MR. PARKER:

Q. Directing your attention to senate district number 52, Dr. Valinsky, would you give us the percentage of deviation plus or minus for 52?

A. Minus 1.73 percent. That is the smallest size population senate district.

Q. So that's what we would call then the maximum minus?

A. That's correct, sir.

Q. Deviation, so that gives us the variance on the senate side of 3.39, is that correct?

A. That's correct, sir.

Q. Okay. Now, what data sources did you use, Dr. Valinsky, in drawing up this single member statewide [89] redistricting plan?

A. I used a number of sources from the census bureau. The first is a document which is labeled P C 1 A 26 Mississippi. It's entitled "Number of Inhabitants of the State of Mississippi". It is this report that defines the population distribution by counties and by beats and also by principal cities. It also defines areas which are considered highly urbanized, those that are considered metropolitan centers and the remainder.

Q. Is this an official publication of the United States Bureau of the Census?

A. It is, sir.

Q. What other documents have you used in the preparation of your plan?

A. This document is a controlled, a second document which is entitled "The Master Enumeration District List". It is this document that indicates within counties, within supervisory districts and within census tracks the various enumeration districts with respect to population size and number of households.

Q. And are these statistics obtained from the United States Bureau of Census?

A. That's correct, sir.

Q. And they define the population of the E D?

[90] A. They define the population of each E D within the State of Mississippi.

Q. What other data sources, if any, did you use, please, sir?

A. In order to determine the maps for what we call the metropolitan areas, that includes Biloxi, Gulfport, and the Jackson, Mississippi areas, and in addition the Meridian area, there is a document known as Block Statistics which is published by the U. S. Department of Commerce, Bureau of the Census. Each block in those areas, urbanized areas, are defined, for example, the one I have in my hand is for Biloxi, Gulfport, Mississippi, and there are maps that are provided that describe the census tracks enumeration districts in each block. In addition to that, there is a summary of each block

within the census track indicating the size of the population. For example, the first one indicated here is track number one, block 101, there's a total population of 79 persons.

Q. Are there any other, there are, I think you testified there are block maps for Jackson, for Biloxi, Gulfport and for—

A. (Interrupting) And in special cases and for Meridian.

Q. Are these official publications of the United States Bureau of the Census? [91]

A. These are official publications.

Q. Were there any other, was there any other source of population statistics that you used in derivation of your plan?

A. The only additional documents was the description of the revision of the supervisory districts in Hinds County with the census publication which indicated the changes in enumeration districts and the size of the population for those districts to conform to the new, uhh, to the proposed plan.

Q. And what was the source of that data?

A. Also the U. S. Bureau of the Census.

Q. Any source other than the U. S. Bureau of the Census?

A. No, sir.

BY MR. PARKER:

Ask that the documents described by Dr. Valinsky be admitted in evidence as plaintiff's exhibit 19.

BY JUDGE COLEMAN:

Very well.

BY MR. PARKER:

Q. What instructions did I give you, Dr. Valinsky, in drawing up this proposed plan?

A. Your letter stated that I was to prepare districts, equal population districts, single member districts, and as much as possible to preserve and maintain [92] existing and known political boundaries such as county lines and supervisory districts.

Q. If it became necessary to break a county line in order to achieve equality of population in single member districts what was the next largest political subdivision boundary line that you used?

A. Supervisory district.

Q. If it was necessary to break supervisor district lines

in order to achieve equal quality of population in single member districts what boundary line did you use?

A. The census track and enumeration district for the same time I maintain the integrity of cities unless they were larger in size than the ideal or normal or norm for the district, either the House District or the Senate Distict.

Q. Who established these boundaries of these census tracks and enumeration districts?

A. These are established by a committee of the Bureau of the Census jointly and in conjunction with the representatives, usually political representatives, of localities, the State of Mississippi.

Q. Let me ask you again how successful were you in achieving your goal of maintaining county lines?

A. With respect to the House of Representatives approxi- [93] mately 40 percent of the county lines have been preserved. In the Senate 51 counties were preserved out of the 82 with another six or seven having only a very minimum break of additional E D or two E D's.

BY JUDGE COLEMAN:

Are you prepared to tell us how many county lines yon would have been able to preserve intact if you had been operating on a 10 percent variation?

BY THE WITNESS:

Not precisely, Your Honor, but it certainly would have preserved, maintained a greater portion, a greater number.

BY JUDGE COLEMAN:

It's quite obvious that you made a very, very exhaustive study of this question. I would like for you to tell the Court whether in your opinion it would be possible to set up districts throughout the State of Mississippi that would stay within, say 20 percent, well I'll put it this way, that would stay within 15 percent variations without disturbing any county boundaries and without separating the people of one county and putting them as a minority over in with another county purely to achieve numerical equality.

BY THE WITNESS:

Where I cannot precisely give you the number it is [94] my considered opinion looking at the data that a 50 percent variation would virtually—

BY JUDGE COLEMAN:

15 percent.

BY THE WITNESS:

15 percent variation will virtually, at least in the Senate, will maintain intact the county line. In the House I would say a very high percentage, extremely high percentage would be maintained with that amount of variation.

BY JUDGE COLEMAN:

Well this very, very, very exhaustive study you have made and this very impressive study, and I compliment you for its impressiveness, of course, we have the problem of the standards upon which you operate, but of course you were operating as you were requested to do which is your business and all that, but I wonder if you would undertake to compile for the Court a plan for as the Court's plan a plan which would preserve county lines intact in the State of Mississippi and still stay within variations of not more than, what was the variation that was permitted in the Mayhan case?

BY MR. PARKER:

That was a legislature plan, not a court ordered plan [95] it was 16 percent.

BY JUDGE COLEMAN:

I understand that, but the legislature might conceivably enact such a plan, and two we are after doing here what the Constitution requires, and not necessarily claiming credit for whether the Court does it or the legislature does it because the Supreme Court in the Myer case says we want the legislatures to do it, but nevertheless how long would it take you, Doctor, do you suppose, to devise such a plan?

BY THE WITNESS:

That can be done within a month. There is one problem, Your Honor. In some of the counties that are extremely large, 50,000, 60,000 population, you would almost immediately exceed the 15 percent. In other words, Your Honor, what I'm saying is this—

BY JUDGE COLEMAN:

In enunciating it sounds to me as you are saying 50 percent, but you are saying 15 percent, f i f t e e n?

BY THE WITNESS:

15 percent, that's right.

BY JUDGE COLEMAN:

15 percent.

BY THE WITNESS:

For example, the norm being 18,000, there are [96]

counties as high as, I'm not including Hinds, for example as high as 57,000 population. That would be approximately 300 percent variation. Now the other approach of course is to break this up into districts so that they comprise totally the plan, I can cite an illustration here that might be useful. In the House plan in number six district, I'm sorry, it is not number six, it is number seven, eight, and nine, were devoted to the counties of DeSoto and Tate, Tate County represented itself in District Number Nine, that's 18,000; however, DeSoto County had approximately 35,000 population, that was broken into two districts—

BY JUDGE COLEMAN:

It probably has 50 now, you know that's a very fast growing area of the state right up against Memphis, Tennessee.

BY THE WITNESS:

That's right, Your Honor.

BY JUDGE COLEMAN:

Of course, you have to go by what 70 said.

BY THE WITNESS:

This is based on 1970 census.

BY JUDGE COLEMAN:

Right.

[97] BY THE WITNESS:

Now using these figures this divides the county into two districts, the total comprised is the county. Now if you're operating on that basis you can maintain the 15 percent without any difficulty. In other words, treating DeSoto as a individual district would already be 100 percent variance, deviation. In the same manner, for example, Hinds County is broken into 12 districts, the total comprised the whole entire county.

BY JUDGE COLEMAN:

Let's see, what would the population be per district in Hinds County?

BY THE WITNESS:

Approximately 18,000, sir. 18,100.

BY JUDGE COLEMAN:

And norm is about 17,000?

BY THE WITNESS:

18,171.

BY MR. PARKER:

Q. Now in instances where both counties are preserved intact, Dr. Valinsky, would there be any necessity to change existing precinct lines?

A. None whatsoever, sir.

Q. How does the maintenance of county lines in your [98] Mississippi plan compare with the maintenance of county lines in the Alabama plan that was accepted by the District Court?

A. Somewhat higher, a larger number of counties, lines have been preserved in both the House plan and the Senate plan for the State of Mississippi.

Q. Would you describe the procedure that you followed in drawing up these districts for the House and the Senate, Dr. Valinsky?

A. To understand the procedure, sir, there are certain criteria which I would like, I think should be stated.

Q. Would you state the criteria first?

A. I believe, Your Honor, you are aware of all these criteria, I'll go through them very, very quickly. There were several used. Primarily our fundamental aim was to use what we call a scientific method or a quantitative mathematical method to develop an impartial or in other words, an automatic plan where I do not define exactly where a district ought to be based upon my own discretion. Seven criteria was used. The whole population districts of course was a important aim, fully important was to maintain political and historical boundaries which I have already indicated, the concept of contiguity or [99] contiguous territory was maintained—

BY MR. PARKER:

(Interrupting) Will you spell that—

BY THE WITNESS:

(Continuing) And enclaves—

BY MR. PARKER:

(Interrupting) Will you spell that for the Court Reporter, please?

A. Contiguity is c o n t i g u i t y.

Q. Would you define that for us, please, sir?

A. It is defined as one land mass, the assumption being that an individual could walk at any point within the district without stepping out of bounds and it's avoidance of enclaves.

Q. How successful were you, how successful were you in constructing districts which were contiguous?

A. 100 percent.

Q. 100 percent?

A. That's correct, sir.

Q. All right, what was your next criteria?

A. The concept of compactness.

Q. Would you define that, please?

A. Compactness is essentially the consolidation of areas that should not spread throughout the state. Perfect or ideal compactness is measured one to one ratio, [100] for example in relationship to a square where each side is equal to each other, a circle would be a compact unit. Any deviation from that indicates a lack of compactness.

Q. To what extent were you able to achieve the goal of compactness?

A. My opinion of this case in the House more than 90 percent of the districts I felt were quite compact, more than 95 percent of the Senate districts were compact. They looked presentable almost like in a square form.

Q. Now in cases in which the districts were not as compact in some other cases what was the reason that the district was not quite as compact as you might have possibly liked it, district—

A. (Interrupting) Very free—

Q. (Continuing) Circle—

A. (Interrupting) Very frequently, sir, it's related to maintaining either a county line or district lines. In other cases it was as a consequence of meeting of criteria of equal district population size. Since the inclusion of a, or exclusion of a specific track or E D might create a very large variance.

Q. Now what was your fifth criteria?

A. The fifth criterion dealt with single member districts. [101] And to what extent were you able to achieve that?

A. A hundred percent, sir.

Q. So you have 122 single member districts for the House and—

A. (Interrupting) 52, sir.

Q. For the Senate?

A. Senate.

Q. And does that include single member districts within Hinds County?

A. Correct, sir.

Q. Harrison County?

A. Correct, sir.

Q. In Jackson County?

A. That's right, sir.

Q. What was your sixth criterion?

A. The sixth was the concept of homogeneity, that's h o m o g e n e i t y, homogeneity with respect to urban and rural. The first step in the operation was to separate the metropolitan areas as defined by the Bureau of the Census from the more rural nonmetropolitan areas and treat it separately. For example, the Hinds County, Jackson, Harrison Counties were treated as a separate subset of the total plan. The final criterion, which I think characterizes the plan, is to set up some type of automatic mechanism [102] that would render the initial centers of each district as being impartial. In that respect I employed the use of random numbers which is a scientific device mechanism that is utilized in polling procedures, it is utilized at the Bureau of the Census on a continuous basis, to make the initial selection of the centers. I mean by that, for example, in the selection of the 122 house districts, 122 numbers were selected that located a specific enumeration district within a, a, uhh, a beat within a county, and these represented the center of the formation of the district, all of that determines not basically through my own discretion. This insures representativeness of all areas of the population, it tends to at least eliminate the possibility of my subjectivity and it makes or renders my action impartial. From that point on, since the centers are selected the attempt then is to use the census divisions, for example, total counties first, the various beats secondly, census tracks, enumeration districts in that order, nor to build up the districts and then denotions of compactness, contiguity, equal size and are fully considered within the framework of the concept of maintenance of county lines. I might indicate, well, that comes within the definition of procedure.

[103] BY MR. PARKER:

Q. Now what was the random sampling technique that you used? What, did you use any tables or data for determining the centers of the 122 centers of your various House districts and the 52 centers of your Senate districts?

A. I did, sir. I employed the use of a table of random numbers which is well-recognized called a Million Random Digits. This is prepared by the Rand Corporation that I think most of us are fairly aware of. These numbers were generated by means of computers and there are millions of

such digits and this serves the basis for finding a number. And what I do with these numbers is to find a location simply by going through the census material, the mass list, the master enumeration district list by using these numbers obtaining the physical spot of the center of a district, and this, and so the center of each of your districts in the House and the Senate plan was determined completely at random.

Q. There was no choice on your part at all?

A. Absolutely not, sir.

Q. Now what procedure then using these criterion, what procedure did you follow in the drawing the districts for the House and the Senate?

[104] A. There were several steps. The first was to achieve the homogeneity of urban and rural. The—

Q. (Interrupting) Would you describe how that physically or practically how you actually did that?

A. The Bureau of the Census will define metropolitan, the standard metropolitan areas, they represent counties or multiple counties represented by a city of at least 50,000 in population, Biloxi, Gulfport and Jackson cities meet that category, so—

BY JUDGE COLEMAN:

You think that urban and rural can be made homogenous?

BY THE WITNESS:

I didn't hear the last of your statement, Your Honor.

BY JUDGE COLEMAN:

I said do you think that urban and rural can really be made homogenous within the political sense or in, or on any sound scientific basis that anybody could put his hand on other than as a mathematical theory?

BY THE WITNESS:

Well, they will not be homogenous, I agree with you, sir. That is the reason why I attempted to separate the two, and in other words consider the urban counties and select the districts there apart from the rural counties.

BY JUDGE COLEMAN:

[105] What you mean then is you did try to give them separate identity?

BY THE WITNESS:

That's correct, Your Honor.

BY MR. PARKER:

Q. You stratified them?

A. The statistical term is known as stratification.

Q. Would you describe how that stratification took place in this plan?

A. It is thoroughly automatic since the counties are defined where you find the larger centers. In addition, the, in any, for example, within Hinds County there are two types of enumeration districts, those that are found wholly within the corporate limits of the city and they are numbered from 1 to 100, beyond the city, in other words, the more rural areas or the non-urban or suburban areas, they are defined as the 100 series.

Q. Are these census tracks?

A. They are all tracted within the, these are enumeration districts within the tracks and are the, that's right, the census tracks are how we define them, and as a consequence we are able to determine those districts that will comprise the urban within the Hinds County and the two which were defined as non-urban [106] counties, non-urban districts, sir, in the House plan.

Q. Once this stratification of urban and rural areas had been completed, what was the second step in the procedure?

A. The second step was to devise a plan very early in the procedure for the preservation of counties. This was not followed in the Alabama plan and I thought this was an improvement. I attempted to group a series of counties together, uhh, pardon me one moment, sir.

BY JUDGE COLEMAN:

I would like to suggest that really this should be, this examination of this witness should be limited to matters of constitutional importance, one man one vote is the constitutional issue, and we go into all of these mathematical details, obviously the witness must know the court doesn't want to hear all that, we are not mathematicians, but I did want to ask you this, sir, before it escaped me. We have problems in Mississippi about so-called racial dilution, diluting the racial vote. Did you take any of that into consideration in compiling these figures?

BY THE WITNESS:

None whatsoever, Your Honor. I was not aware of the distribution.

BY JUDGE COLEMAN:

[107] So you did not, nothing that you have done is calculated to cure racial dilution, if indeed in exist anywhere?

BY THE WITNESS:

Absolutely not, sir.

BY JUDGE COLEMAN:

What do you say to that, counsel?

BY MR. PARKER:

Well let me just ask a couple of questions along those lines.

Q. Did you consider the racial composition of your proposed districts that you have drawn, Dr. Valinsky?

A. Not at all, sir.

Q. So the population book from the Bureau of the Census, the blue book which you used didn't contain any racial statistics at all?

A. No, sir.

Q. Did the med list contain any racial—

A. (Interrupting) No, sir.

Q. In other words, your plan was drawn in a color blind fashion?

A. With one exception. The block, the block listing includes a number of none whites in block, but in no way the orders were to my staff not to in any way to look at those figures and have no meaning at [108] all.

Q. Now did you consider the location of encumbents in drawing your new districts?

A. Not at all, sir.

Q. Now first of all let's hand the witness plaintiff's exhibit number 18, the statewide map, and I would ask you, I would like to ask you, Dr. Valinsky, to describe to us how you numbered these counties.

BY JUDGE COLEMAN:

Isn't that evident from the map?

BY MR. PARKER:

I wanted Dr. Valinsky to describe the procedure that he used in describing the counties in which the districts were based once he has stratified the rural and urban areas.

BY JUDGE COLEMAN:

I'm real sorry, counsel, but I cannot see where what number you give a district has any significance, whether it's 1 or 50 or 80. What constitutional significance does the number of a district have whether it's 1 or 40?

BY MR. PARKER:

Well this was simply the procedure that Dr. Valinsky—

BY JUDGE COLEMAN:

[109] Well I'm going to hold that irrelevant of my own motion, because it's now 4:25 in the afternoon and we need to stick as close as we can to decisive issues in this case and I don't care how Dr. Valinsky numbered them as long as he numbered them.

BY MR. PARKER:

Well then I would like to make an offer of proof, Your Honor, that the counties were numbered in a certain time and fashion and that the districts were grouped in terms of population centers in terms of the norm on the basis of that number.

BY JUDGE COLEMAN:

If you say that is the case the Court will accept it as a fact and we will move on.

BY MR. PARKER:

Q. How does this procedure that you followed in the Mississippi case, Dr. Valinsky, compare with the procedure that you followed in Alabama?

BY JUDGE COLEMAN:

I also hold that irrelevant. Whatever the Alabama Court did has no precedential value for us and no precedential bearing for us in our decision. He has already told us what he did in Mississippi and we will be the Judge of it.

BY MR. PARKER:

[110] Even if it was affirmed by the Supreme Court in that case?

BY JUDGE COLEMAN:

Well the Supreme Court, as I said, affirmed it in a memoranda Opinion and the precedential weight of memorandum Opinions is not very heavy.

BY MR. PARKER:

Well the Second Circuit has decided that only the Supreme Court itself is entitled to overrule a per curiam opinion of that Court.

BY JUDGE COLEMAN:

Well I'm not about to overrule one of them I assure you.

BY MR. PARKER:

Q. So you followed the same procedure generally that you followed in Alabama?

A. There is one additional step I think might very well be—

Q. (Interrupting) Describe it.

A. In order to maintain and preserve as many county lines as possible, the 82 counties were grouped to primarily population centers, for example, DeSoto and Tate receiving its impetus from Memphis were combined together as a unit. Union and Pontotoc with New Albany as center, sub-center of, uhh, with a larger [113] center of Tupelo, and each of these, the interesting feature of this, each of these were multiples of district sizes, multiples of, for example, in DeSoto and Tate the combined population was 54,429 which was very fairly close to the size, normal size for three districts, and this was one step and the object there was to see within these groupings to what extent we could have maintained these county lines as a preliminary step. It also served to indicate that there was a certain amount of cohesiveness of these areas in relationship to your major or sub-population centers, areas of interest.

Q. Now in what way was the procedure that you followed in Hinds County different from the procedure that you followed statewide?

A. In Hinds County, sir, of course I used revised S D lines. There it was pretty well determined that 12 districts would be used. No additional grouping was needed except that in the random selection it became rather apparent that the urban areas would be separated from the non-urban centers, in other words, the environment of Jackson City would pretty much fall within two districts. I am now referring to the House. With respect to the Senate, now the size senatorial districts, that most of the area which is [112] considered suburban or rural would fall into one such district.

Q. So the districts in Hinds County then recognize the rural urban stratification of Hinds County?

A. That's correct, sir.

Q. And gave representation to the rural areas?

A. Right, sir.

Q. Now in Hinds County did you try to maintain the supervisor districts lines to the extent possible?

A. Very close to perfection, and centered that definition of compactness, the possibility of eliminating enclaves and also maintaining equal population districts.

Q. And what procedure did you, did you follow the same procedure for Harrison and Jackson Counties?

A. That is correct, sir.

Q. Now have you attempted after completion of this plan in any way to validate the final results? First of all, let me ask you in terms of population statistics? How have you validated to make sure that you have included all of the population in your House and Senate districts?

A. Well some of the population of the 122 and the 52 senate districts should sum up to the total population of the state, and it does.

[113] Q. Did you check that?

A. That has been verified.

Q. Do you know whether or not it's consistent with Mississippi population and economic growth conditions?

A. Fairly recently I received a document which was rather interesting.

BY JUDGE COLEMAN:

I must say to you, counsel, if I had known we were going to get into all this on a conditional admission I never would have permitted the Doctor to testify. This is just not helping us at all to come to grips with the chief issue which is whether or not the present reapportionment of the legislature is enacted by that legislature, is legal and constitutional. I realize he has no option except but to answer your questions, but let's please sort of stick to the issue before the Court, please, sir.

BY MR. PARKER:

Your Honor, I think the point of the testimony is that it is feasible to draw a plan in Mississippi with a variance of 5.39 for the House and 3.39 for the Senate.

BY JUDGE COLEMAN:

Well there is no doubt that it is if you are willing to fracture state lines, I mean county lines, which [114] is something that has never been done in the history of the state, and as you very correctly remarked at the outset of these proceedings we have had districts within counties, but there has never been an instance in the one hundred and, since 1817, in which county lines were broken for legislative and senatorial districts. Now the Supreme Court of the United States told a three judge District Court in North Dakota you can't foist a policy on North Dakota of requiring them to have multi-member districts when their policy has always been to have single. By analogy I don't think this Court has the authority to foist upon the people of Missis-

sippi senatorial and representative districts fracturing the county lines in violation of the undisputed, unchallenged tradition and policy of the state for over a hundred years, yet the plan which you have had the doctor to fix up here would do just exactly that.

BY MR. PARKER:

Let me, in response to that, Your Honor, let me make one point for the Court's consideration. It seems to me that using counties as a basis for legislative districts in the state policy of countywide voting for the legislature would be unconstitutional and could not be adopted or followed by the court in one situation, [115] and that would be the situation in which countywide voting or at large voting is rooted in racial discrimination.

BY JUDGE COLEMAN:

I know, but the doctor says he hasn't even looked at that at all so he is in no position to help us with that problem. That's why I'm trying to get you to sort of bring this testimony to the point.

BY MR. PARKER:

That evidence is contained in our other, our other documents.

BY JUDGE COLEMAN:

All right.

BY MR. PARKER:

Q. Do you have the report of the Mississippi R & D Center, Dr. Valinsky?

A. I do, sir.

Q. What is the title of that report?

A. Mississippi's Changing Economy, 1973.

Q. And what did you discover as a result of looking at that report?

A. This consist of data prepared by the Bureau of the Census and analyzed by the Mississippi Research and Development Center. There are two maps that are of interest. The first deals with a map of the [116] population centers. This is map number 13 on Page 57 which has a description of the various major and minor population centers, and it seems to conform rather closely to the original groupings indicated.

Q. Which original groupings are those?

A. In the second procedure of grouping the counties with multiples of the size of the ideal district.

Q. So this conforms with the groupings that you made?

A. That's correct, sir. In addition to that, there is a map number 1 on Page 22 which defines a major Mississippi commuting center, centers of 1970. These maps were drawn incidentally after the plan was completed, and it seems again that the groupings that were utilized seems to conform to the major and minor commuting centers so that it does indicate a certain amount of homogeneitic economic life.

BY MR. PARKER:

Ask that that report be admitted in evidence as plaintiff's exhibit number 25, please, sir.

BY DEPUTY CLERK:

That will be number 20.

BY MR. PARKER:

Well we have listed the other plan 20, 21 through 24, so this will come at the bottom of the list, number 25. These other exhibits will be in sequence. [117] Then our list will be altered to that extent. This will be 20.

BY JUDGE RUSSELL:

It may be so admitted and marked. (Above referred to document received in evidence and marked Plaintiff's Exhibit 20.)

BY MR. PARKER:

Q. Let me ask you three more questions then, Dr. Valinsky. First of all, did you split any E D's, and if so how did you determine the accuracy of your population in those split E D's?

A. I believe in one case they are split and this is a legitimate Bureau of the Census split. They define their census track in certain enumeration districts in terms of block groups. This is found in the large metropolitan cities and block groups consist of a number of blocks and the populations are defined for them.

Q. So in how many cases then did this occur, sir?

A. One, sir.

Q. And what was the source of your population statistics for the split E D's?

A. This was included in both the master enumeration list as well as the block statistics.

Q. So these came from the census bureau?

[118] A. That's correct, sir.

Q. Now would your plan require a re-registration of voters?

A. I don't believe it would, sir.

Q. How do you know that? What is your basis for that opinion?

A. In checking on the implementation in Alabama there was no re-registration that basically revises a voting list. With regard to the precincts I understand less than 10 percent of all precincts required modification.

Q. Is that in the Alabama plan?

A. In the implementation of that plan.

Q. In your opinion how long would it take election officials of the State of Mississippi to put this plan, the plan that you propose, in place?

A. It would take within a three month period.

BY MR. PARKER:

One moment, Your Honor. No further questions, Your Honor. You may cross-examine.

CROSS-EXAMINATION

BY MR. SUMMER:

Q. Doctor, have you ever read *Future Shock*, the book *Future Shock*?

A. Did I ever read it?

Q. Yes, sir.

[119] A. No, sir.

Q. Are you familiar with the book at all?

A. No, sir, I haven't read it.

Q. Well if you were I was just going to comment that you have brought here a plan that fits that book very well. You say it would take three months to put your plan into operation, is that correct, sir?

A. That's correct, sir.

Q. Now what do you mean by that, to locate the boundary lines?

A. Based upon implementation in Alabama, sir, it took a three month period to define the modification to precinct, to make the changes in the voting list, there was a very minimum of new polling places that had to be established, in other words, prepare for an election, the implementation of the plan and plan for an election.

Q. Have you ever read the plan that was adopted by the Mississippi Legislature, Doctor?

A. No, sir.

Q. You know nothing—

A. (Interrupting) I will say this, however. I was aware

of the plan. I spent about two or three minutes when I first came here to simply see what the general thinking of the legislature was in this respect so [120] that I saw that the multi counties were connected and I asked a question with regard to the variance, but beyond that I have not examined or studied the plan.

Q. So you spent every bit of two or three minutes on the Mississippi Legislative—

A. (Interrupting) The reason for that, sir, is not to be greatly influenced in my finding by any other plan in existence.

Q. You were determined not to be influenced by any other plan other than what you had been directed to do?

A. The, uhh, that's right, sir, in view of the fact that in order to obtain a impartial automatic plan this was a procedure that I usually follow.

Q. Now when you say an impartial automatic plan what do you mean by automatic?

A. The random numbers are automatically there and they indicate where the center locations for each of the districts might be.

Q. So when you were determining the centers as you explained to us in the first place that was all determined by a computerized situation where you had taken the numbers from the Rand Corporation, put them in the computers and somehow determined the population center for an individual single-member district in [121] Mississippi, is that correct?

A. Not entirely, sir. The, the, the random numbers were generated by computers but they were published in a book and I used those figures in sequence.

Q. What I'm talking about, Doctor, did you take anything into consideration other than the numbers from the books and records that you have just been talking about?

A. I only considered the population figure, geographical and topographical areas as defined by the Bureau of the Census.

Q. Now you stated at one point during your examination that you had, I believe, taken the, uhh, that the Census Bureau sets up these E D Districts by geographical, historical boundary lines and so forth. Do you see any difference in that, how long have they been doing that?

A. They have been doing it for more than a hundred years, sir.

Q. Do you see any difference in requiring the Census Bureau to change their method of doing that than you do in requiring the State of Mississippi to change its method of picking its representatives by the same exact type of situation, historical boundary lines and so forth?

[122] A. I don't think I'm in a position really to tell the Bureau of the Census to change its methods because they are pretty well accepted in the statistical profession as being fairly scientific.

Q. But you did, you do know that all of these tracks which you have on the House and the Senate plan were taken from the districts, E D Districts, that have been established historically by geographical historical boundary lines, creeks, rivers, cities, towns, and so forth?

A. That's correct, sir.

Q. So the genesis of your entire work was based on a work that came out of this type of establishment?

A. Correct, sir.

Q. All right, sir. Now we have come a long way as you will term it now in Hinds County Number 31 and—

A. (Interrupting) Are we looking at the House of Representatives?

Q. Yes, sir, I believe we are.

A. No, that's the senate seat, sir.

Q. Sir?

A. 31 is the Senate district.

Q. I'm sorry. Which is it in the House? Number 69, I believe, in the House. Now you have set out how many separate districts for the House of Representatives [123] in Hinds County?

A. 12, sir.

Q. 12 separate districts?

A. That's right, sir.

Q. Comprised primarily of what?

A. Primarily of, uhh, well, either, uhh, well, tracks, enumeration districts or comprised supervisory districts.

Q. Could you, let me ask you this, Doctor. How long have you been in Jackson?

A. I have been in Jackson, uhh, four times, sir.

Q. Four times, and during those four times that you have

been to Jackson have you ever been on the ground to take a visual look at what you have done?

A. No, sir.

Q. Have you ever been in any one of the 82 counties to take a visual look at what you have done?

A. Not with respect to these plans, sir.

Q. Do you know that whether or not if you divide Hinds County up into 12 districts from track and E D Districts and supervisor's districts, all combined, have you had anyone to make a survey to determine whether those lines, where those lines would be?

A. They are determined. They are completely delineated in the census maps, every block is indicated.

[124] Q. How would you go about educating the people of Hinds County who have voted consistently at the same voting place for a number of years in re-educating them as to what voting district they lived in, what representative district they lived in?

A. This happened in my own case where the polling places were changed, the districts, we went under redistricting at my home and there were notices that were sent out by the various political parties and by the Board of Elections defining where we are located, where our polling place should be.

Q. Let's talk about your place. When was the last time New York was reapportioned?

A. 1971 or '72.

Q. And who did it?

A. Who did it?

Q. Yes, sir.

A. A group of lawyers that were appointed by the State Legislature.

Q. It was a legislative plan?

A. There has been revisions from time to time because of violations of certain constitutional principles, I understand.

Q. Was it by legislative plan or by court plan?

A. It was legislative plan, but there were changes made [125] in specific areas and districts that were recommended by the Courts.

Q. Are there any multi-member districts there?

A. None, sir, none whatsoever.

Q. Every district in New York is a single member district?

A. That's right, sir.

Q. And how long has that been?

A. As long as I have ever remembered.

Q. So that's a historical—

A. (Interrupting) That's right, sir.

Q. (Continuing) feature of New York State?

A. (No Answer.)

Q. Single member districts?

A. That's correct, sir.

Q. All right, sir. Getting back to Jackson and Hinds County, how long would it take to prepare maps to show where these 12 districts are?

A. They are already prepared, sir. They have been submitted.

Q. Now let's suppose that this plan goes into effect and you have an individual who lives in one of these E D, 222 for instance, and right now he lives in Beat One, Beat Two, Beat Three, or Beat Four or Beat Five, and he knows where he lives and where he votes, or soon will know if they have a new one. How [126] do we educate that fellow as to whether or not he is still liable for bonds, school bonds and things like that that he may have voted on when he was in a supervisor's district or a county district as opposed to one of these E D 22's and track 9501's and so forth?

A. Well I don't have competence with regard to the legislation how it operates here in the State. I would not be able to answer directly.

Q. If you were a legislator, sir, this is the point I am trying to get at here now, if you were a legislator taking into effect that we have outstanding bonds in both schools and many other areas and you were required to, uhh, you set it up in 12 districts and all of a sudden you are no longer responsible for any of that, how do you think that would effect [sic] the state?

A. I don't know whether it should effect this plan at, I don't know whether the plan should effect that at all. My experience in New York school districts for purposes of taxes is quite different from the county, it is quite different from the township, quite different from the unincorporated area in which I live in. They are separate issues.

BY JUDGE COLEMAN:

I want to ask Dr. Valinsky this question. You know [127] the smallest political entity in Mississippi is the voting precinct. Of course each beat is divided into voting precincts and then of course the county has a sum total of so many. I live in a small county which has only sixteen voting precincts in the entire county. Now are your figures and are your maps broken down by voting precincts, for example if you were redistricting Hinds County on a single member district, 12 single member districts, could that be done now by saying precinct 1, 2, 3, 4, what have you, or do your lines so far as you know cut across existing precinct lines?

A. In view of the fact thereof the district represents a large number of people, I have assumed that in most cases, probably 90 percent of the cases, the precincts would be included. There will be some districts, my guess would be more than a speculation, sir, is based upon experience in Alabama where more than not, uhh, less than *10 percent of the district lines cut across precincts.* There would be some modification. I believe in the same way, Your Honor, as any revision of the supervisory districts would require in some ways a reconstitution of some of the precincts.

BY JUDGE COLEMAN:

[128] That is the question we have been waiting to see because it is very important, it involves a reregistration of the voters. You see, Mississippi has permanent registration. I registered some nearly 40 years ago to vote in the precinct that I have voted in every since, I have never had to go back to register. Of course the commissions meet and they mark off the names of the people who have died and moved away and of course add the names of the people who have come in and registered. Of course I know that it's traditional and congressional redistricting to evenly divide congressional districts, that's of course a national thing rather than state, but they divide congressional districts by precincts because that's a well-defined thing that the average citizen can grasp, creates a minimum of confusion, and I just wondered if your Hinds County plan was really tied down to existing precinct lines. I guess it wouldn't have done any good if you had because they may have to be changed under whatever is done in Kirksey, but I can very well see how it would be a comparatively easy matter and not very confusing to the public to say all right in repre-

sentative district number 1, precinct 1, 2, 3, 4, 5, 6, 7, just start at the Madison County line up here and go all the way to the Copiah County line [129] and all the way over to the Warren County line and that would be the end of the matter in Hinds County. I suppose maybe it could be done in Harrison. Judge Russell here would have the expertise on Harrison and pretty much so I am sure on Jackson. These are things that have to be considered and as it seems to me when you get down to traditional state policy and things that have been maintained so long, as I read the Supreme Court decisions they are not likely to be overturned, to say the least. Now, in that regard, we of course are faced with the problem of whether or not the Supreme Court has ever told us that we must overturn all of those things. It seems to be that the [word omitted] of the North Dakota Decision is that you Federal Courts don't be going around upsetting existing state policy, and you know in the Virginia case the Fourth Circuit did just that. The District Court had observed all of these traditional policies, the Fourth Circuit said no, the overriding thing is numbers, population, the Supreme Court said oh no, of course that was a legislative reapportionment, but mind you that is what we have before us today primarily, and we are talking to you now about a fallback position in case what has already been done is nevertheless invalid. How long would it take you to, suppose we get [130] the Kirksey case down and suppose it's not appealed and it becomes final, how long do you think it would take you to, and suppose the precincts then are delineated by the Board of Supervisors, they are the ones that have the authority to fix the boundaries of precincts, how long then do you think it would take you to come up with a plan, a single member plan, a single member district plan for Hinds County?

BY THE WITNESS:

Hinds County would take within a month, sir.

BY JUDGE COLEMAN:

But it might be a month?

BY THE WITNESS:

Time could, uhh, you could speed up time, Your Honor, by adding more staff, obviously, sir. In response to your precinct, uhh, the statement on precinct which is quite important, I recognize that, to maintain as much as possible this plan if it were to be accepted could very readily

be superimposed on any precinct line to the extent of modification, does not mean that the plan that you have here cannot be modified in some respect.

BY JUDGE COLEMAN:

Would I now be allowed to ask you just what traditional state policy did you consider in this, or did you just [131] hue to the standard of a 3 percent difference and not more, what was your major variation, 5 percent?

BY THE WITNESS:

5.39 in the House, sir. In the Senate it was 3.39 percent variation.

BY JUDGE COLEMAN:

But you do say as to the Senate there were only a few county lines that were breached?

BY THE WITNESS:

About one-third, Your Honor.

BY JUDGE COLEMAN:

Oh, one-third. Excuse me. Go ahead.

BY MR. SUMMER:

Q. Doctor, I would like to ask you this now, and specifically we will relate this to Hinds County but it could generally apply, be applicable to any 82 counties. Let's suppose that we adopted your plan and had 12 representatives. They would not be representatives of Hinds County, they would be representatives of districts, 31 in the state of Mississippi, would they not?

A. Primarily they do represent people that put them in office, they would represent districts. The assumption of course is that a legislator would always represent a district, would represent a county, and of course above all would represent a state.

[132] Q. Why, if he has his own 12 little one-twelfth of the county district and that's where he lives and that's who elects him, who is he answerable to other than the people in that one little section of the district? Why is he, why would he be considered a county man?

A. I think it depends very much, sir, on my legislator, I don't have competence in that direction, but the assumption is that people who are elected to office have a responsibility not only to their own people but they do represent their state and they do have a responsibility which might transcend their immediate constituency.

Q. But I think we all understood that that is not necessarily, that's a theoretically wonderful situation but that is not necessarily true in practicality, is it?

A. That's correct, sir.

Q. All right, sir. Let's suppose, uhh, you said you had separated Hinds into the urban and the rural and let's suppose that in one of these twelve districts something very vital to Hinds County was required to be built and a bond issued there for such as a huge cattle barn or rodeo barn or anything of that nature, and the taxes were going to be distributed equally among Hinds County. You would have 11 members of the [133] legislature who resided in Hinds County but who represented separate districts that could very well take a stance against any improvement if it was going in that particular district without fear of losing a vote in his district as a general rule, could you not?

A. That's possible, sir. The experience in New York has not been that way. There is usually a coalition of people representing specific counties or specific areas of the state discuss mutual problems.

Q. If we should put a witness on this stand this afternoon to testify that that generally would be true in Hinds County, Mississippi, you would not disagree with him, would you?

BY MR. PARKER:

I object, it's hypothetical.

BY JUDGE COLEMAN:

I think so. I think he is right about it.

BY MR. SUMMER:

All right, sir.

Q. So, what is so good about a single member district plan?

A. I am not going to speak about the constitutionality, this is not my expertise, the assumption one way to obtain, the only way I really know how to obtain equal population districts would be through this procedure.

[134] Q. Well, I'm not addressing my questions to you from a constitutionality standpoint, we are going directly into the question of single member districts and how they would effect this state as it has operated historically for a long period of time, and I'm just trying to get you to tell me how a county like Hinds who is, which has the seat of government and which must have a progressive legislature if it is cut up in 12 pieces and 5 other pieces wherein and how could you ever achieve any degree of unanimity among

those memberships, if as you have said you already have a great variance among the people.

BY JUDGE COLEMAN:

Mr. Attorney General, I think I'll have to draw the same rein on you that I did on counsel for the opposition awhile ago. I believe we are getting outside of the relevant and material part of this gentleman's testimony.

BY MR. SUMMER:

All right, sir. Thank you, Your Honor.

Q. Now, and I'll end that line of questioning at that point, and I will ask you, sir, what figures did you use when you drew up a plan for Forest County? Did you use the figures for the old, under the old supervisor's district or the new supervisor's district?

[135] A. In 1970 statement by the Census Bureau as to what the districts were. Only in one state, uhh, in one county did we use, revise the proposed at the time.

Q. What was that?

A. Hinds.

Q. Hinds County?

A. That's right.

Q. And you made a guess at that?

A. No, sir. I had a accurate description of what the proposed lines are, district lines are, as prepared by the Jackson Planning Board and this is delineated block by block by the Bureau of the Census to conform with those lines.

Q. Well then, sir, I will ask you one more question and I think that will bring my thing to a close, and I hope this is not too [sic] duplicate a question that the Court asked you just a minute ago. What features of the State of Mississippi historically, statistically, boundary wise or otherwise that form or make a part of the State of Mississippi that has existed in the past have you used as an input to your plan?

A. The input, sir, one, the maintenance as much as possible of county lines which are historic. The boundaries of the enumeration districts have been historical here defined for many, many years. This is [136] also so with the census track so as much as possible I did maintain to recognize geographical areas.

Q. Even though you had the good intention, you had the intention to use that if possible, the fact still remains that

you have broken 60 county, 60 percent of the county lines, have you not?

A. In the House plan, that's right, sir.

Q. Yes, sir. Now other than that one criteria which you obviously did not carry through in the preparation of your plan was there any other criteria along that line that you used other than figures and—

A. (Interrupting) There is a—

Q. (Continuing) criteria that you—

A. (Interrupting) there was an attempted avoidance of my fostering any opinions I might have on Mississippi and to do that it is very important to develop this automatic kind of plan using the building blocks which have been defined jointly by the Bureau of the Census and the State of Mississippi and the various localities, and so that's population distribution that I used. The assumption of the scientific plan is which is well recognized in the statistical profession and by the Census Bureau is that such a procedure will insure adequate representativeness of all the populations or areas and the like.

[137] Q. In other words, if we were all products of automation you did it just like as if they were 2,212,000 robots in the State of Mississippi, you separated those robots into equal districts as if they were people instead of robots but—

A. (Interrupting) I recognize population centers, for example, as I indicated in my grouping. I did recognize that.

Q. (Continuing) but you did not take into consideration any factors that counties may have in common with each other?

A. Urban and rural determination, that was included also, sir.

Q. Just the fact that one was outside the city and one was inside the city though, is that correct?

A. That's an important consideration, that's right, sir.

Q. All right, for instance Oktibbeha and what are the counties that you put together up there, Oktibbeha, Clay, Carroll and—

BY JUDGE COLEMAN:

Oktibbeha and Clay are on one of them that I saw.

BY MR. SUMMER:

Q. Did you take into consideration any features that those counties may have in common, anything that they may—

A. (Interrupting) No, sir.

[138] Q. Did you take that into consideration in regard to any other than as you said the rural and the urban?

A. No, sir.

BY MR. SUMMER:

Thank you, sir.

BY JUDGE COLEMAN:

Anything on redirect?

BY MR. SUMMER:

If the Court will indulge me just one minute.

BY JUDGE COLEMAN:

All right.

BY MR. SUMMER:

That's all.

BY JUDGE COLEMAN:

All right.

REDIRECT EXAMINATION

BY MR. PARKER:

Q. Dr. Valinsky, you were asked about the possibility of drawing legislative districts equal in population based on voting precincts. Does the Bureau of the Census outside the standard metropolitan statistical areas publish any population data on the basis of voting precincts?

A. No, it does not, sir.

Q. So if you were basing, would it be feasible then to [139] base legislative district lines on the basis of voting precincts, is there any accurate population data available outside of the S M A S A's?

A. No, sir. What I think we responded to was whether you can superimpose this plan, indicate what the nature of the modifications would have to be. Now in the areas where there are block statistics adjustments can be made precisely as blocks are defined, uhh, as long as enumeration districts conform to, uhh, as long as voting precincts might conform to census tracks which it does in many cases. You then are able to make, relate the population figures to that group.

Q. Would you tell the Court whether or not you believe that this plan provides the greatest equality of population among the districts using the criteria which you stated?

A. It does, sir.

BY MR. PARKER:

No further questions, Your Honor.

BY JUDGE COLEMAN:

Dr. Valinsky, I must say to you in all candor that I have a great deal of reservations about the standards upon which you operate, but you have certainly done a mammoth statistical job here and we appreciate your testimony and we are glad to have you in Mississippi, [140] and you are now excused.

BY THE WITNESS:

Thank you very much, Your Honor.

BY MR. SUMMER:

Court please, may I ask him just one question?

BY JUDGE COLEMAN:

Yes, sure.

RECROSS EXAMINATION

BY MR. SUMMER:

Q. And, Doctor, to take nothing away from the Court's response there I just wanted to ask you this. In the preparation of your plan everything you used in the preparation of that plan was based on facts and figures that were composed or gathered by someone else, books that were published by someone else, information that was prepared by someone else. Did you validate the source of that information prior to—

A. (Interrupting) The Bureau of the Census—

BY MR. PARKER:

(Interrupting) I object, Your Honor, because I think the Court can take judicial notice that the census data is most reliable and I think it's irrelevant for the Attorney General to inquire—

BY JUDGE COLEMAN:

[141] Well I'll say to both sides that we will weigh it for what it's worth based on all those considerations. We know where he got it of course, and there is one further question, I don't want to unduly prolong this, it's now five minutes after five, but you say the Census Bureau does not compile population statistics by precincts. How do you see in the Congressional Directory all of these congressional districts which would have to be set up on a population basis divided on the basis of precincts, and nearly every large city in the country for example that has more than one congressman is divided by precincts.

BY THE WITNESS:

This is not uniform, Your Honor. There are a number

of states and when I looked at these figures about three years ago there were about 18 or 19 states that did break down precinct figures in terms of registration by precincts, but this is not uniform throughout the country, sir.

BY JUDGE COLEMAN:

Thank you very much and you are excused.

(Witness excused.)

[Exhibits Omitted]

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PLAINTIFF'S EXHIBIT P-19

May 7, 1975

Mississippi House of Representatives

DISTRICT NO.	DESCRIPTION	TOTAL POPULATION	PERCENTAGE OF DEVIATION
1	Tishomingo County: All Alcorn County: SD2: ED1,3,4	18,375	+1.12%
2	Alcorn County: SD2: ED2 SD1: ED13,14 Corinth ED5-12 SD4: Corinth ED20-23 ED19,24,26,27	18,006	-.90%
3	Prentiss County: SD1 SD3 SD4 SD5	18,113	-.31%
4	Prentiss County: SD2 Alcorn County SD1: ED15 SD3 SD4: ED25 SD5 Tippah County: SD1 SD2: ED14 Ripley: ED8-10 SD4 SD5	18,437	+1.46%
5	Tippah County: SD2: ED11-13 SD3 Benton County: All Marshall County: SD2 SD5	18,521	+1.92%
6	Marshall County: SD1 SD3 SD4	18,184	+.07%
7	DeSoto County SD1: Olive Branch: ED1A-1C LD2,3 SD2	18,105	-.36%

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DISTRICT NO.	DESCRIPTION	TOTAL POPULATION	PERCENTAGE OF DEVIATION
8	DeSoto County: SD1: All less ED1-3 SD3 SD4 SD5	17,780	-2.15%
9	Tate County: All	18,544	+2.05%
10	Tunica County: All Coahoma County: SD1 SD2: ED10 SD3	18,482	+1.71%
11	Coahoma County: SD2: ED9,11,12 SD4: Clarksdale: ED19-31,40 SD5	18,116	-.30%
12	Coahoma County: SD4: Clarksdale: ED16-18,32-38 ED39, 41-46 Tallahatchie County: SD5: ED11,13,14	18,253	+.45%
13	Quitman County: All Panola County: SD2: ED6,8,9	18,194	+.12%
14	Panola County: SD1 SD2: ED7 SD3: ED30,31 SD5	18,061	-.60%
15	Panola County: SD3: ED24-29 SD4 Yalobusha County: All	18,377	+1.13%
16	Lafayette County: Oxford: All SD1: ED5 SD2: ED2,3 SD3: ED9,9B,10,11	18,506	+1.83%

DISTRICT NO.	DESCRIPTION	TOTAL POPULATION	PERCENTAGE OF DEVIATION
17	Lafayette County: SD1: ED6, 7 SD4: ED15,16,16B,17 SD5: ED21,22 Calhoun County: SD1 SD2 SD3 SD4: All less ED21 SD5: All less ED16	18,538	+2.02%
18	Chickasaw County: All Calhoun County: SD4: ED21 SD5: ED16	18,565	+2.17%
19	Pontotoc County: All Union County: SD3: ED18	18,230	+.32%
20	Union County: All Less SD3: ED18	18,229	+.32%
21	Itawamba County: All Lee County SD3: ED26	18,424	+1.39%
22	Lee County: SD1 SD2 SD3: ED27-29 Tupelo: ED10-16	18,508	+1.85%
23	Lee County: SD3: Tupelo: ED17-25 SD4: Tupelo: ED32-35 Verona: ED31,31B Remainder: ED37,38	18,423	+1.39%
24	Lee County: SD4: ED30,36 SD5 Monroe County: SD3: ED26 SD4: ED33-38 SD5	18,083	-0.48%
25	Monroe County: SD1: Amory: ED2-8 Remainder: ED11,12 SD2: ED19,20 SD4: Aberdeen: ED27-32	17,802	-2.05%

DISTRICT NO.	DESCRIPTION	TOTAL POPULATION	PERCENTAGE OF DEVIATION
26	Monroe County: SD1: ED1,9,10 SD2: ED21 SD3: All less ED26 Lowndes County: SD1 SD2: ED27-29 Clay County: SD1: ED28	18,042	-.71%
27	Lowndes County: SD2: Columbus: All less ED17,18,20	17,950	-1.22%
28	Lowndes County: SD2: Columbus: ED17,18,20 ED30,31,32 SD3 SD5 Oktibbeha County: SD2: ED2	18,517	+1.90%
29	Tallahatchie County: SD1 SD2 SD3 SD4 SD5: ED9,10,12,15,16 Grenada County: SD5	18,481	+1.71%
30	Grenada County: SD1 SD2 SD3 SD4	18,161	-.06%
31	Bolivar County: SD1 SD2: All less ED22 SD3: ED1,2 Shelby: ED3-5 ED6,8,9,11,12	18,267	+.55%
32	Bolivar County: SD2: ED22 SD4: ED33 Cleveland: ED36-51 Merigold: ED55, 55B ED53-56	18,499	+1.81%

DISTRICT NO.	DESCRIPTION	TOTAL POPULATION	PERCENTAGE OF DEVIATION
33	Bolivar County: SD3: ED7,10,13 SD4: ED34,52,57 Sunflower County: SD5	18,007	-.90%
34	Bolivar County: SD5: ED58 Shaw: ED59-61 ED62-64 Sunflower County: SD2: ED25,28,29 SD4 Leflore County: SD1 SD2 SD3: ED35	17,918	-1.39%
35	Sunflower County: SD1 SD2: Moorhead: ED26-27 ED30,31 SD3	18,329	+.88%
36	Washington County: SD3: Greenville: ED12,22-29, ED32,35,55-58 Greenville North: ED49-50 Remainder: ED51,53-56,9900	18,091	-.44%
37	Washington County: SD3: Greenville: ED13-21 ED30,31,34 ED43-46	17,999	-.95%
38	Leflore County: SD3: Greenwood: ED12-30,34	17,893	-1.55%
39	Leflore County: SD3: Greenwood: ED11,31-33 Remainder: ED36-39 SD4 SD5	18,044	-.70%
40	Bolivar County: SD5: ED65-67 Washington County: SD4: All less ED5,10 SD5: All less ED66,72	17,894	-1.52%

DISTRICT NO.	DESCRIPTION	TOTAL POPULATION	PERCENTAGE OF DEVIATION
41	Washington County: SD1 SD2 SD3: Greenville: ED10-42,47,48 Remainder: ED52,57-62 SD4: ED5,10 SD5: ED66,72	18,207	+.20%
42	Attala County: All Less SD4: ED9,10	17,882	-1.81%
43	Montgomery County: All Carroll County: SD1 SD2 SD4	17,948	-1.23%
44	Carroll County: SD3 SD5 Attala County: SD4: ED9,10 Holmes County: SD1: All less ED13-14 SD2	17,843	-1.81%
45	Choctaw County: All Webster County: All	18,487	+1.74
46	Clay County: All Less SD1: ED28	18,453	+1.55%
47	Oktibbeha County: SD1: Starkville: ED4-12 ED13,15,16 SD2: ED1 SD3: ED18	18,401	+1.27%
48	Winston County: All	18,406	+1.22%
49	Oktibbeha County: SD1: ED14 SD2: ED3,38 SD3: All less ED18 SD4 SD5 Noxubee County SD1 SD3: ED9 SD5 Lowndes County SD4	17,922	-1.57%

DISTRICT NO.	DESCRIPTION	TOTAL POPULATION	PERCENTAGE OF DEVIATION
50	Kemper County: All Noxubee County: SD2 SD3: ED4-8 SD4	18,326	+.85%
51	Madison County: SD5: ED2 Holmes County: SD1: ED13,14 SD3 SD4 SD5 Yazoo County: SD1: ED25,28 SD2 SD4: ED2-4	17,945	-1.24%
52	Humphreys County: All Yazoo County: SD1: ED24,26 SD3: ED19 SD5	17,754	-2.29%
53	Yazoo County: SD1: ED27,29 SD3: All less ED19 SD4: ED1,5	17,985	-1.02%
54	Sharkey County: All Issaquena County: All Warren County: SD1: ED4,6-10,9900	17,978	-1.06%
55	Warren County: Vicksburg: SD1: ED1-2 Vicksburg: SD2: ED11-20 Vicksburg: SD3: ED21-29 Vicksburg: SD4: ED30,31,33	17,885	-1.57%
56	Warren County: SD1: ED3,5,5B SD4: Vicksburg: ED32,34-37 Remainder: ED38 SD5: All less ED47,49	17,992	-.99%
57	Leake County: All Madison County: SD4: ED5	18,220	+.27%

DISTRICT NO.	DESCRIPTION	TOTAL POPULATION	PERCENTAGE OF DEVIATION
58	Madison County: SD1: All less ED20 SD4: ED4 SD5: All less ED2	17,836	-1.84%
59	Madison County: SD1: ED20 SD2 SD3 Rankin County: SD3 SD4 SD5: All less ED33	18,062	-.60%
60	Rankin County: SD2: Flowood: ED7,7B Jackson: ED6 Pearl: ED8,9,9B,11,11B, 11C,12,13 Remainder: Tract 201: ED15 Tract 202: ED16 Tract 203: ED10,17,18 Tract 204: ED24,24B,25 Tract 206: ED14,20,21	18,171	-.39%
61	Rankin County: SD1 SD2: Brandon: Tract 208: ED4,5,5B Tract 205: ED23 Tract 207: ED19 Tract 208: ED22A,22B,22C SD5: Tract 210: ED33	17,989	-1.00%
62	Scott County: All Less: SD5	18,146	-.14%
63	Neshoba County: All Less: SD4: ED17,19-22	18,283	+.62%
64	Newton County: SD1 SD3 SD4 Scott County: SD5 Neshoba County: SD4: ED17,19-22	18,553	+2.10%

DISTRICT NO.	DESCRIPTION	TOTAL POPULATION	PERCENTAGE OF DEVIATION
65	Lauderdale County: Meridian: SD1: Tract 9501.01 ED20-21 Tract 9501.02 ED25-26 SD3: Tract 9501.02 ED38,38B Tract 9501.03 ED39-41 SD4: Tract 9501.03 ED52,54,57 Tract 9501.02 ED62,63 Remainder SD3: ED50,51 SD4: ED65	18,279	+.59%
66	Lauderdale County: SD1: ED32-37 SD2: ED11-13B,15-19 SD3: ED46-49 Newton County: SD2 SD5	18,269	+.54%
67	Lauderdale County: Meridian: SD1: Tract 9501.01 ED22 Tract 9501.02 ED27-29 Tract 9501.04 ED30-31 SD2: Tract 9501.01 ED1-6 Tract 9501.04 ED7-10 SD3: Tract 9501.03 ED42 Tract 9501.04 ED43-45 SD4: Tract 9501.03 ED53,55 SD5: Tract 9501.04 ED74	18,380	+1.15%
68	Lauderdale County: Meridian: SD4: Tract 9501.03 ED56 Tract 9501.04 ED58-61 SD5: Tract 9501.04 ED70-73,75,76 Tract 9501.01 ED77-79 Remainder SD2: ED14 SD4: ED64,66-69 SD5: ED50-54	18,331	+.88%
69	Hinds County: SD1: Jackson Tract 1: ED1,2,2B,3(All) Tract 2: ED4,5 Tract 3: ED7,8(All) Tract 4: ED9 Tract 14: ED13(Block 105) SD1: Remainder Tract 101: ED75B,76,77 Tract 102: ED78 SD2: Tract 101: ED75L,75BL	17,919	-1.39%

DISTRICT NO.	DESCRIPTION	TOTAL POPULATION	PERCENTAGE OF DEVIATION
70	Hinds County: SD1: Tract 102: ED79-86 Tract 105: ED89,90,93L Tract 106: ED91L SD2: Tract 103: ED87,88 Tract 105: Bolton: ED91 Tract 105: ED89L,90L,93 Tract 106: ED94,95,96 Tract 106: Edwards: ED92 Tract 113: ED98 SD3: Tract 109: ED200 Tract 115: ED202 SD4: Tract 106: ED95M,96L Tract 107: ED97	17,902	-1.48%
71	Hinds County: SD1: Jackson Tract 4: ED10,11,12 Tract 5: ED13,14,15,16,17,18(All) Tract 6: ED20 Tract 12: ED35,37 Tract 13: ED39,40 SD2: Jackson Tract 12: ED36	17,955	-1.19%
72	Hinds County: SD1: Jackson Tract 6: ED19,21 Tract 8: ED23 Tract 9: ED26,27 SD2: Jackson Tract 7: ED22,119,120L Tract 8: ED23L,24,25 Tract 9: ED27L Tract 10: ED28 SD2: Remainder Tract 103: ED143	17,897	-1.51%
73	Hinds County: SD2: Jackson Tract 2: ED41L,61 Tract 10: ED29,30 Tract 11: ED31L,33,34 Tract 12: ED37L Tract 13: ED38,39L,40L,41,42 Tract 14: ED43L,43B,44 Tract 15: ED46-49 Tract 16: ED50L Tract 29: ED45	18,052	-.65%

DISTRICT NO.	DESCRIPTION	TOTAL POPULATION	PERCENTAGE OF DEVIATION
74	Hinds County: SD4: Jackson Tract 19: ED63,64,65,66(All) Tract 20: ED69,70(All) Tract 21: ED71,72,112,113,114,115 Tract 22: ED73,74,116,117,118 Tract 24: ED124,125 Tract 25: ED68,108,109,110	17,800	-2.04%
75	Hinds County SD2: Jackson Tract 7: ED121 SD2: Remainder Tract 103: ED146L SD4: Clinton (All) Tract 103: ED135,135B,135C,136 Tract 104: ED137-141 SD4: Jackson Tract 7: ED120 SD4: Remainder Tract 103: ED144,146,147 Tract 104: ED148 Tract 108: ED154 Tract 109: ED155-158	17,972	-1.10%
76	Hinds County: SD3: Tract 107: ED151L,199 Tract 108: ED153L,193M Tract 111: ED189,190M,191L Tract 112: ED152,195L Tract 113: ED197,198,203,204 SD4: Tract 105: ED149,93M Tract 106: ED150 Tract 107: ED142,151,199M Tract 108: ED153,193L Tract 110: ED159-161 Tract 111: ED190L SD5: Tract 107: ED194,199L Tract 111: ED190,191 Tract 112: ED156,195,196,201 Tract 113: ED202L,204L	17,801	-2.04%

DISTRICT NO.	DESCRIPTION	TOTAL POPULATION	PERCENTAGE OF DEVIATION
77	Hinds County: SD3: Jackson Tract 24: ED124L,126,127 Tract 33: ED128,129,175,176,177(All) Tract 35: ED181L Tract 36: ED178,179(All) SD3: Remainder Tract 109: ED156L,158L Tract 110: ED159L SD4: Jackson Tract 23: ED122,123	18,024	-.81%
78	Hinds County: SD3: Jackson Tract 24: ED125L Tract 25: ED108L,109L,111 Tract 26: ED105,106,107,171(All) Tract 27: ED67M,100M,101,102 Tract 31: ED132,133,172(All) Tract 32: ED130,131(All) Tract 34: ED134,134B	17,844	-1.80%
79	Hinds County: SD5: Jackson Tract 11: ED31M,32, Tract 15: ED165 Tract 16: ED50M,51,52,53,54,166,167 Tract 17: ED59,60,61,62(All) Tract 18: ED56,57,58(All) Tract 27: ED67L,100L,169 Tract 28: ED55,168 Tract 29: ED99,163,164,164B Tract 30: ED103,104 ED170A Blks 201-205	17,912	-1.45%
80	Hinds County: SD3: Jackson Tract 34: ED173BL SD3: Tract 111: ED188 SD4: Tract 110: ED162 SD5: Jackson Tract 30: ED170A (excluding Blocks 201-205) ED170B Tract 34: ED173,173B,174 Tract 35: ED180,181 Tract 37: ED184,185 Tract 38: ED182,183 SD5: Remainder Tract 110: ED192A-C Tract 111: ED187	17,895	-1.52%

DISTRICT NO.	DESCRIPTION	TOTAL POPULATION	PERCENTAGE OF DEVIATION
81	Lincoln County: SD1 SD2: ED1,2 SD3: ED27 Copiah County: SD2: ED26	17,955	-1.19%
82	Lincoln County: SD2: ED3 SD3: ED26,28 SD4 SD5 Copiah County: SD3: ED14 Franklin County: All	18,224	+.29%
83	Jefferson County: All Adams County: SD4: ED14-16 SD5: ED19-20	17,792	-2.09%
84	Warren County: SD5: ED47,49 Claiborne County: All Copiah County: SD1: ED15,22 SD4 SD5: ED9,10	17,912	-1.43%
85	Copiah County: SD1: All less ED15,22 SD2: All less ED26 SD3: ED13 SD5: ED1-8	17,753	-2.30%
86	Smith County: All Jasper County SD1 SD2: ED1 SD3	17,929	-1.33%
87	Jasper County: SD2: ED2 SD4 SD5 Jones County: SD2: All less ED48A,48B,48C	17,998	-.95%

DISTRICT NO.	DESCRIPTION	TOTAL POPULATION	PERCENTAGE OF DEVIATION
88	Clarke County: All Wayne County: SD3: ED2 SD4: ED3 Jones County: SD3: ED3	17,983	-1.03%
89	Jones County: SD4 SD5 Wayne County: SD4: ED4,5 SD5 Greene County: SD3: ED3	18,038	-.73%
90	Greene County: All Less SD3: ED3 Wayne County: SD1 SD2 SD3: ED1	18,125	-.25%
91	Jones County: SD1: Laurel: ED9-13 ED15-17 ED20-22 SD1: Remainder: ED38,39 SD3: All less ED3	17,976	-1.07%
92	Jones County: SD1: Laurel: ED14,18-19,23-37B SD1: Remainder: ED40,41 SD2: ED48A,48B,48C	18,107	-.35%
93	Simpson County: All Less SD2: ED12,13	18,278	+.59%
94	Simpson County: SD2: ED12,13 Covington County: All Jefferson Davis County: SD3	18,451	+1.54%

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DISTRICT NO.	DESCRIPTION	TOTAL POPULATION	PERCENTAGE OF DEVIATION
95	Jefferson Davis County: SD1 SD2 SD4 SD5 Lawrence County: All Less SD1: ED9 Less SD3	18,362	+1.05%
96	Lamar County: SD1: ED11 SD3: ED12 SD5: ED3,4 Marion County: SD1 SD2 SD5: All less ED22	18,181	+.06%
97	Marion County SD3 SD4 SD5: ED22 Walthall County: SD2: ED8,9 SD3: ED14,15 SD4 SD5 Lawrence County: SD1: ED9 SD3	18,090	-.45%
98	Walthall County: SD1 SD2: ED6,7,10 SD3: ED13 Pike County: SD1 SD2: Magnolia: ED22-24 Remainder: ED28 SD3 SD4: Summit: ED3,4 Remainder: ED15 SD5	18,523	+1.94%

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DISTRICT NO.	DESCRIPTION	TOTAL POPULATION	PERCENTAGE OF DEVIATION
99	Pike County SD2: McComb: ED18-19 McComb South: ED20-21 Remainder: ED25-27 SD4: McComb: ED5-14 Remainder: ED16-17	18,363	+1.06%
100	Adams County: SD1: Natchez: ED27-37 SD4: ED1-13	17,858	-1.72%
101	Adams County: SD1: Natchez: ED26,38 Remainder: ED39-41 SD2 SD3 SD5: ED17,18,21 Wilkinson County: SD1: All less ED11 SD2 SD4 SD5: ED2,3	17,892	-1.54%
102	Wilkinson County: SD1: ED11 SD3 SD5: ED1 Amite County: All	17,908	-1.45%
103	Lamar County: SD4 SD5: ED1,2 Forrest County: Hattiesburg: SD1: ED15A,8 ED24-27 SD2: ED7B,8	18,207	+.20%
104	Forrest County: Hattiesburg: SD1: ED9-14 ED16-23 SD3: ED32,34,35	17,994	-.97%

DISTRICT NO.	DESCRIPTION	TOTAL POPULATION	PERCENTAGE OF DEVIATION
105	Forrest County: SD1: ED28 SD2: Petal: ED1-4 SD3: Petal: ED39 Hattiesburg: ED29-31 ED33 ED36-38- Hattiesburg South: ED40-42 Remainder: ED45	17,921	-1.38%
106	Forrest County: SD2: ED5-7A SD3: ED43,44 SD4 SD5 Perry County: All	18,098	-.40%
107	Lamar County: SD1: All less ED11 SD2 SD3: ED13 Stone County: SD1: ED10 SD2 SD3: ED8 Pearl River County: SD1 SD2 SD3 SD5: ED15,16	18,202	+.17%
108	Stone County: SD1: ED9 SD3: ED6,7 SD4 SD5 George County: All	18,210	+.21%
109	Pearl River County: SD4: All less ED35 SD5: All less ED15,16	18,068	-.57%
110	Pearl River County: SD4: ED35 Hancock County: All	18,073	-.54%

DISTRICT NO.	DESCRIPTION	TOTAL POPULATION	PERCENTAGE OF DEVIATION
111	Harrison County: SD3: Tract 30: ED86B,87A Tract 31: ED80,85 Tract 35: ED78 SD4: Tract [illegible]: ED58-60 SD5: Tract 34: ED54 Jackson County: SD1 SD5:	18,554	+2.11%
112	Harrison County: SD3: Pass Christian: ED69-73 Long Beach: ED63-68 Remainder: Tract 25: ED62 Tract 26: ED94 Tract 27: ED90-93 Tract 29: ED89 Tract 30: ED74-77,86A,87B,88 Tract 31: ED79,81-84 SD4: Gulfport: Tract 22: ED52,53 Tract 25: ED44,44B Remainder: Tract 31: ED61A Tract 2: ED61B	18,589	+2.30%
113	Harrison County: SD2: West Gulfport: ED121-124 Gulfport: Tract 16: ED96-99 Tract 17: ED111 Tract 18: ED100-102 Tract 19: ED107 Tract 32: ED95 Remainder: Tract 18: ED129 SD4: Gulfport: Tract 24: ED40 Tract 25: ED40B,41-42 West Gulfport: ED55-57 SD5: Gulfport: Tract 16: ED29 Remainder: Tract 15: ED38A,38B Tract 16: ED39	18,535	+2.00%

DISTRICT NO.	DESCRIPTION	TOTAL POPULATION	PERCENTAGE OF DEVIATION
114	Harrison County: Gulfport: SD2: Tract 14: ED117-119 Tract 17: ED110,112-113 Tract 19: ED103,109 Tract 20: ED103-106 Tract 21: ED120 SD4: Tract 14: ED54,9900 Tract 21: ED50 Tract 22: ED51 Tract 23: ED46-49 Tract 26: ED45 SD5: Tract 17: ED30	18,555	+2.11%
115	Harrison County: SD2: Gulfport: Tract 14: ED116,116B Tract 15: ED115 Tract 17: ED114 Remainder: ED128 SD5: Gulfport: Tract 14: ED32 Tract 15: ED31 Biloxi: Tract 10: ED12 Tract 11: ED13-16 Tract 12: ED17-19 Tract 13: ED21-24 Remainder: ED36B	18,519	+1.92%
116	Harrison County: SD5: Biloxi Tract 6: ED25-28 Tract 8: ED1-3 Tract 9: ED4-5C Tract 10: ED6-11 Tract 13: ED20	18,580	+2.25%
117	Harrison County: SD1: Biloxi ED130-160	18,733	+3.09%

DISTRICT NO.	DESCRIPTION	TOTAL POPULATION	PERCENTAGE OF DEVIATION
118	Harrison County: SD1: D'Iberville: Tract 33: ED161-165 Remainder Tract 33: ED167-171 Tract 34: ED166 SD2: Tract 32: ED125-127B SD5: D'Iberville Tract 33: ED33 Remainder: ED35,36A,37 Jackson County: SD4: D'Iberville: Tract 95.01: ED14-16B Remainder: Tract 95.01: ED29,30	18,564	+2.17%
119	Jackson County: SD4: Ocean Springs: ED9-13G Remainder: ED17-28	18,532	+1.99%
120	Jackson County: SD2: Pascagoula: ED45 Moss Point ED39-44 SD3: Pascagoula: ED51-57,65-67,9900 SD4: Gautier: ED8	18,512	+1.88%
121	Jackson County: SD3: Pascagoula: ED48-50,58-62,68-72	18,523	+1.94%
122	Jackson County: SD2: Escatawpa: ED31,31B Moss Point: ED32-38 Remainder: ED46,47 SD3: ED73	18,361	+1.05%

PLAINTIFF'S EXHIBIT P-20

May 7, 1975

Mississippi State Senate

DISTRICT NO.	DESCRIPTION	TOTAL POPULATION	PERCENTAGE OF DEVIATION
1	Tishomingo County: All Alcorn County: All	42,319	-1.21%
2	Prentiss County: All Itawamba County: All Lee County: SD1 SD2: ED7	42,683	-1.06%
3	Lee County: SD3 SD4 SD5 SD2: ED6 8 9 Chickasaw County: SD3: ED4 Monroe County: Nettleton: SD5: ED13	42,778	+.34%
4	Union County: All Pontotoc County: All Tippah County: SD3 SD4 SD5	42,135	-1.17%
5	Tippah County: SD1 SD2 Marshall County: All Benton County: All Lafayette County: SD2: ED2 SD3: ED10	42,928	+.69%
6	De Soto County: All Tate County: SD2 SD3	42,461	-.36%
7	Tate County: SD1 SD4 SD5 Tunica County: SD1 SD2 SD3 SD5 Panola County: SD1 SD2 SD4: ED21 SD5	42,584	-.12%

DISTRICT NO.	DESCRIPTION	TOTAL POPULATION	PERCENTAGE OF DEVIATION
8	Coahoma County: All Tunica County: SD4 Bolivar County: SD3: ED1 8	42,550	-.20%
9	Quitman County: All Tallahatchie County: All Panola County: SD3 SD4: ED22 23 Sunflower County: SD5: ED10	42,638	+.01%
10	Lafayette County: All Less: SD2: ED2 SD3: ED10 Yalobusha County: All Calhoun Co: SD2 SD3 Grenada County: SD3 SD4	42,387	-.58%
11	Chickasaw County: All Less: SD3: ED4 Calhoun County: SD1 SD4 SD5 Grenada County: SD1 SD2 SD5	42,848	+.56%
12	Leflore County: All	42,111	-1.22%
13	Sunflower County: All Less: SD5: ED10 Bolivar County: SD5: ED58 59-61 62 63 64 66 67	42,624	-.02%

DISTRICT NO.	DESCRIPTION	TOTAL POPULATION	PERCENTAGE OF DEVIATION
14	Bolivar County: SD1 SD2 SD3: All Less: ED1 8 SD4 SD5: ED65	42,364	-.63%
15	Washington County: Greenville: SD3: ED12-48 Greenville North: SD3: ED49,50 SD3: ED53 54 55	42,610	-.05%
16	Washington County: SD1 SD2 SD3: ED51 52 56-62 9900 SD4 SD5 Humphreys County (all)	42,572	-.14%
17	Carroll County: All Montgomery County: All Webster County: All Choctaw County: All Oktibbeha County: SD4	42,653	+.05%
18	Oktibbeha County: SD1 SD2 SD3 Clay County: All	43,341	+1.66%
19	Oktibbeha County: SD5 Lowndes County: SD2 SD3 SD4 SD5	42,976	+.81%
20	Lowndes County: SD1 Monroe County: All Less: SD5: ED13	42,257	-.88%

DISTRICT NO.	DESCRIPTION	TOTAL POPULATION	PERCENTAGE OF DEVIATION
21	Winston County: All Noxubee County: All Kemper County: All	42,927	+.69%
22	Attala County: All Holmes County: All	42,690	+.13%
23	Warren County: SD1: ED8-10 Yazoo County: All Sharkey County: All Issaquena County: All	41,992	-1.50%
24	Warren County: All Less: SD1: ED8 9 10	41,967	-1.56%
25	Madison County: All Leake County: All Less: SD1 SD5: ED20 SD5: ED21	42,440	-.45%
26	Leake County: SD1 SD5: ED20 21 Neshoba County: SD4 SD5 Scott County: All Newton County: SD1: ED10 12 SD3 SD4	42,730	+.23%
27	Neshoba County: SD1 SD2 SD3 Newton County: SD1: ED9 11 SD2 SD5 Lauderdale County: SD1: ED32-37 SD2:- Meridian Station ED11 SD2: ED12-19 SD3: ED46-51 SD4: ED64-67 Meridian: SD5: ED70,70B,71,72 SD5: ED81-83	42,837	+.48%

DISTRICT NO.	DESCRIPTION	TOTAL POPULATION	PERCENTAGE OF DEVIATION
28	Lauderdale County: Meridian: SD1: ED20-31 SD2: ED1-10 SD3: ED38-45 SD4: ED52-63 SD5: ED73-79	42,857	+.53%
29	Lauderdale County: SD4: ED68 69 SD5: ED80 84 Clarke County: All Greene County: All Wayne County: SD1 SD2 SD3 SD4: ED3 5 SD5: ED16	42,305	-.77%
30	Rankin County: All Less SD5: ED30,32	42,996	+0.85%
31	Hinds County: SD1 Tract 101: ED76 77 Tract 102: ED78 ED79 80 81 82 83 84 85 86 Tract 105: ED89 90 93L Tract 106: ED94L, 95L SD2 Tract 103: ED88 Tract 105: ED89L 90L Bolton : ED91 Tract 105: ED93 Tract 106: ED92 94-96 98 SD3: Tract 106: ED200 Tract 107: ED151L 199 Tract 108: ED153L 193M	43,020	+.91%

DISTRICT NO.	DESCRIPTION		TOTAL POPULATION	PERCENTAGE OF DEVIATION
	Tract 110:	ED192A		
		192B		
		192C		
	Tract 111:	ED188		
		189		
		190M		
		191L		
	Tract 112:	ED152		
		195L		
	Tract 113:	ED197		
		198		
		202		
		203		
		204		
	SD4:			
	Tract 105:	ED93M		
		149		
	Tract 106:	ED95M		
		96L		
		150		
	Tract 107:	ED97		
	Raymond:	ED142		
	Tract 107:	ED151		
		199M		
	Tract 108:	ED153		
		193L		
	Tract 110:	ED159		
		160		
		161		
		162		
	Tract 111:	ED190L		
	SD5:			
	Tract 107:	ED194		
		199L		
	Tract 111:	ED190		
		191		
	Tract 112:	ED186		
		195		
		196		
		201		
	Tract 113:	ED202L		
		204L		
32	Hinds County:		43,004	+.87%
	SD3: Jackson:			
	Tract 24:	ED124L		
		125L		
		126		
		127		
	Tract 25:	ED108L		
		109L		
		111		
	Tract 26:	ED106		
		107		
		171(all)		
	Tract 27:	ED102		
	Tract 31:	ED132		
		133		
		172(all)		

DISTRICT NO.	DESCRIPTION		TOTAL POPULATION	PERCENTAGE OF DEVIATION
	Tract 32:	ED130		
		131(all)		
	Tract 33:	ED128		
		129		
		175		
		176		
		177(all)		
	Tract 34:	ED134		
		134B		
		173BL		
	Tract 35:	ED181L		
	Tract 36:	ED178		
		179(All)		
	Tract 37:	ED184,		
		185		
	SD3: remainder			
	Tract 109:	ED156L		
		158L		
	Tract 110:	ED159L		
	SD4:			
	Tract 109:	ED158		
	SD5: Jackson			
	Tract 30:	ED170		
		170B		
	Tract 34:	ED173		
		ED173B		
		174		
	Tract 35:	ED180		
		181		
	Tract 38:	ED182		
		183		
	SD5: remainder			
	Tract 111:	ED187		
33	Hinds County:		42,975	+.80%
	SD1: Jackson			
	Tract 6:	ED19		
		21		
	Tract 8:	ED23		
	Tract 9:	ED26		
		27		
	SD2: Jackson			
	Tract 7:	ED22		
	Tract 7:	ED119		
		120L		
		121		
	Tract 8:	ED23L		
		24		
		25		
	Tract 9:	ED27L		
	Tract 10:	ED28		
		29		
		30 (all)		
	Tract 11:	ED34		
	SD2: remainder			
	Tract 103:	ED87		
		143		
		146L		

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DISTRICT NO:	DESCRIPTION	TOTAL POPULATION	PERCENTAGE OF DEVIATION
	SD4: Clinton (all)		
	Tract 103: ED135		
	135B		
	135C		
	136		
	Tract 104: ED137		
	138		
	139		
	140		
	141		
	SD4: Jackson		
	Tract 7: ED120		
	Tract 23: ED122		
	123		
	SD4: remainder		
	Tract 103: ED144		
	146		
	147		
	Tract 104: ED148		
	Tract 108: ED154		
	Tract 109: ED155		
	156		
	157		
34	Hinds County:	43,102	+1.10%
	SD2: Jackson		
	Tract 11: ED31L		
	Tract 12: ED36		
	37L		
	Tract 13: ED40L		
	SD3: Jackson		
	Tract 26: ED105		
	Tract 27: ED67M		
	100M		
	101		
	SD4: Jackson		
	Tract 19: ED63		
	64		
	65		
	66 (all)		
	Tract 20: ED69		
	70 (all)		
	Tract 21: ED71		
	72		
	112		
	113		
	114		
	115		
	Tract 22: ED73		
	74		
	116		
	117		
	118		
	Tract 24: ED124		
	125		
	Tract 25: ED68		
	108		
	109		
	110		

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DISTRICT NO.	DESCRIPTION	TOTAL POPULATION	PERCENTAGE OF DEVIATION
	SD5: Jackson		
	Tract 11: ED31M		
	32		
	33		
	Tract 15: ED165		
	Tract 16: ED50M		
	51		
	52		
	53		
	54		
	166		
	167		
	Tract 17: ED59		
	60		
	61		
	62		
	Tract 18: ED56		
	57		
	58		
	Tract 27: ED67L		
	100L		
	169		
	Tract 28: ED55		
	168		
	Tract 29: ED99		
	163		
	164		
	164B		
	Tract 30: ED103		
	104		
35	Hinds County:	42,872	+4.56%
	SD1: Jackson		
	Tract 1: ED1		
	2		
	2B		
	3		
	Tract 2: ED4		
	5		
	Tract 3: ED7		
	8		
	Tract 4: ED9		
	10		
	11		
	12		
	Tract 5: ED13-18		
	Tract 6: ED20		
	Tract 12: ED35		
	37		
	Tract 13: ED39		
	40		
	Tract 14: ED43		
	SD1: Remainder		
	Tract 101: ED75B		
	SD2: Jackson		
	Tract 2: ED4L		
	6		
	Tract 13: ED38		
	39L		
	41		
	42		

DISTRICT NO.	DESCRIPTION	TOTAL POPULATION	PERCENTAGE OF DEVIATION
	Tract 14: ED43L 43B 44 Tract 15: ED46-49 Tract 16: ED50L Tract 29: ED45 SD2: remainder Tract 101: ED75L 75BL		
36	Simpson County: SD1 SD2 SD3: Mendenhall: ED16 Smith County: All Jasper County: All Rankin County: SD5: ED30,32	42,285	+1.53%
37	Clairborne County: All Copiah County: All Simpson County: SD3 all Less: Mendenhall: ED16 SD4 SD5	41,989	-1.51%
38	Wayne County: SD4: ED4 SD5: ED17 18 Jones County: SD1 SD2: ED48A,B,C SD3 SD4: ED56 57 59	42,488	-.34%
39	Jones County: SD2 all Less: ED48A,B,C SD4: Ellisville ED53-55 SD4: Remainder: ED58 SD5 Covington County: All Jefferson Davis County: All	42,945	+.73%
40	Marion County: SD2 SD3 SD4 Walthall County: All Lawrence County: All Pike County: SD1 SD2: Magnolia: ED22-24 SD2: ED27 28 SD5	42,879	+.58%

DISTRICT NO.	DESCRIPTION	TOTAL POPULATION	PERCENTAGE OF DEVIATION
41	Lincoln County: All Franklin County: All Less: SD2: ED9 Jefferson County: All	43,087	+1.07%
42	Franklin County: SD2: ED9 Adams County: All Wilkinson County: SD1: ED7,8,10 SD2 SD4	42,487	-.34%
43	Pike County: SD2: McComb ED18-19 McComb South: ED20-21 Remainder: ED25-26 SD3 SD4 Amite County: All Wilkinson County: SD1: ED9 11 SD3 SD5	42,700	+.16%
44	Pearl River County: SD1 SD2 SD3 SD4: ED30 31 SD5: ED15-18 Lamar County: All Forrest County: SD2: ED7-8 Marion County: SD1 SD5	42,703	+.16%
45	Forrest County: SD1: Hattiesburg ED9-27 SD2: Hattiesburg ED7B SD3: Hattiesburg ED29-38 Petal: ED39 Hattiesburg South ED40-42	42,247	-.91%

DISTRICT NO.	DESCRIPTION	TOTAL POPULATION	PERCENTAGE OF DEVIATION
46	George County: All Stone County: All Perry County: All Forrest County: SD1: ED28 SD2: Total ED1-4 5 6 SD3: ED43 44 45 SD4 SD5	42,924	+.68%
47	Hancock County: All Harrison County: SD3: ED78 ED82-84 ED80 SD4: ED58-60,61B SD5: ED34 Pearl River County: SD4: Picayune: ED19-29 SD4: ED32 33 34 35 SD5: Picayune: ED12-13 SD5: ED14	43,064	+1.01%
48	Jackson County: SD4: D'Iberville: ED14-16B Harrison County: SD1: D'Iberville: ED161-165 SD1: ED166-171 SD2: West Gulfport: ED121-124 SD2: ED125,126,127,127B,129 SD3: Long Beach: ED63-68 SD3: Pass Christian: ED69-73 SD3: ED62,74-77,79,81,83,85-94 SD4: Gulfport Tract 23: ED46 Tract 24: ED40 Tract 25: ED40B ED41 ED42 SD4: West Gulfport (all) Tract 24: ED56,57 Tract 31: ED55 SD5: D'Iberville Tract 33: ED33 SD5: remainder Tract 2: ED36B Tract 15: ED38,38B Tract 16: ED39 Tract 32: ED36 Tract 33: ED37 Tract 34: ED35 SD4: ED61A	42,019	-1.44%

DISTRICT NO.	DESCRIPTION	TOTAL POPULATION	PERCENTAGE OF DEVIATION
49	Harrison County: SD1: Biloxi: ED130-160 SD5: Biloxi Tract 6: ED25-28 Tract 8: ED 1-3 Tract 9: ED 4,5,5B,5C Tract 10: ED6-12 Tract 11: ED13-16 Tract 12: ED17,19 Tract 13: ED20	43,014	+.89%
50	Harrison County: SD2: Gulfport: ED95-120 SD2: remainder Tract 15: ED129 SD4: Gulfport Tract 14: ED54,9900 Tract 21: ED50 Tract 22: ED51,52,53 Tract 23: ED47-49 Tract 26: ED44,44B,45 Tract 27: ED43 SD5: Gulfport: ED29-32 SD5: Biloxi Tract 12: ED18 Tract 13: ED21 22 23 24	43,249	+1.45%
51	Jackson County: SD2: Pascagoula: ED45 SD3: Pascagoula: ED48-72,9900 SD4: Gautier: ED8 SD4: Ocean Springs ED9-13G SD4: ED19 29-30 21-26	42,084	-1.29%
52	Jackson County: SD1: SD2: Escatawpa: ED31,31B SD2: Moss Point: ED32-44 SD2: ED46 47 SD3: ED73 SD4: ED17,18,18B ED20 ED27 ED28 SD5:	41,895	-1.73%

Plaintiff's Exhibit P-25
May 7, 1975

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

CIVIL ACTION No. 3830

PEGGY J. CONNOR, ET AL., *Plaintiffs*

VS.

WILLIAM L. WALLER, ET AL., *Defendants*

DEPOSITION OF HENRY J. KIRKSEY

APPEARANCES:

FRANK R. PARKER, ESQUIRE,
Attorney at Law
Lawyers' Committee for
Civil Rights Under Law
233 North Farish Street
Jackson, Mississippi 39201

REPRESENTING THE PLAINTIFFS

GILES W. BRYANT, ESQUIRE,

Assistant Attorney General
Post Office Box 220
Jackson, Mississippi 39205

REPRESENTING THE DEFENDANTS

Taken at the Instance of the Plaintiffs,
223 North Farish Street
Jackson, Mississippi
March 17, 1975.

INDEX

	Page
Style of cause, appearances	1
Index	2
Testimony of Mr. Kirksey	
Direct Examination	3
Exhibit 1 (resume)	3
Exhibit 2 (map, House)	11
Exhibit 3 (map, Senate)	11
Exhibit 4 (map, house districts)	25
Exhibit 5 (map, Senate districts)	25
Exhibit 6 (plan, Kirksey)	57
Exhibit 7 (plan, Kirksey)	57
Exhibit 8 (House plan)	60
Exhibit 9 (Senate plan)	60
Exhibit 10 (census publication)	62
Exhibit 11 (Federal court document)	74
Cross Examination	64
Deposition Concluded	84
Deponent's Certificate	84
Court Reporter's Certificate	85

• • •

[3] *HENRY J. KIRKSEY*, sworn by Polly J. Pinson to duly answer questions, testified as follows:

DIRECT EXAMINATION BY MR. PARKER:

Q. Would you state your name and address for the record, please?

A. Henry J. Kirksey, 1123 Robinson Street, Jackson, Mississippi.

Q. Let me hand you a copy of a document marked, "resume" and ask if you can identify that?

A. Yes, this is my own resume.

Q. Does this document accurately state your qualifications, training, background and experience in the areas of redistricting, legislative reapportionment, map making,

familiarity with census data, political and electoral experience?

A. I think it does.

Q. Was this information that was supplied by you?

A. It was.

BY MR. PARKER: I ask that this resume be admitted and be marked as Exhibit "1" to the deposition. (Whereupon said resume was marked as Exhibit "1" to the deposition.)

Q. Mr. Kirksey, are you a registered voter in Mississippi?

A. Yes, I am.

[4] Q. In which county?

A. Hinds.

Q. How long have you been a registered voter in Hinds County?

A. Since 1962, I believe.

Q. What is your race?

A. Black.

Q. And I see from your resume, you were a candidate for the Mississippi Senate in 1961, is that correct?

A. That's correct.

Q. And what was the result of your Senate race?

A. The—I was running on Post 5 of, I believe, Senate District #22, Hinds County, and the election was won—this was in the November general election, by Don Spann; there were three candidates, Jean Muirhead and myself were the two additional. I ran third. I had in excess of 10,000 votes. All of my votes came from—I'll say the overwhelming majority of my votes came from the black community as I expected. I had a majority of all the majority black voting precincts in Jackson and a fair vote outside of Jackson where I had actually no contacts at all. My campaigning was—in terms of money—limited to about $85 that I received two or three days before the election and I spent most of that amount for some spot announcements with WOKJ so that that, except for perhaps, well, I'm sure, less than a dozen appearances in various—with other candidates for office [5] in the City of Jackson, that was the extent of my campaign. I didn't actually enter the race with the idea of winning because my knowledge of the population distribution and the relationships of blacks to whites in terms of the total population and the fact that whites have never voted for blacks, regardless of what that position may be, that I—I

knew very well that I couldn't win. As a matter of fact, the first appearance was at the Elks Rest out on Lynch Street and my subject—I appeared with the other black candidates and there were three or four of the total of Hinds County, something like a dozen, I believe, and I stated my position and why I was running and the impossibility of winning, after which the other candidates and particularly Mrs. Sanders and—I can't recall the other person running for the legislature, told me that if that was the approach I was going to take, they didn't want me to appear again with them, because they were running to win.

Q. Would you have liked to have won if it had been possible?

A. Well, obviously I very much would have liked to have won, but I knew I couldn't; I knew that from what I know about the history.

Q. Well, what I'm asking about is whether you ran as a serious candidate; you would like to have won if it had been possible?

A. If it had been possible, most assuredly I would— [6] you know, liked to have won.

Q. O.K., now, would you identify the race of Mr. Spann who won that election?

A. He's white, as is Jean Muirhead, the incumbent at that time.

Q. Are you familiar with the racial make-up of the Hinds County delegation to the Mississippi House of Representatives and Mississippi Senate?

A. With one exception throughout the state, all of them are white; that means that Hinds County delegation is white, every other county delegation is white with the exception of Holmes.

Q. And the Hinds County delegation to the Mississippi Senate is also white?

A. It is all white.

Q. Are there any blacks in the Mississippi Senate at all?

A. None.

Q. You've been working on legislative reapportionment and county redistricting and accompanying relevant census data and maps from approximately what date?

A. 1971.

Q. You've been working in this area for approximately four years?

A. Yes.

[7] Q. Are you the Henry J. Kirksey who is the Plaintiff in this case?

A. Yes, I am; the Conner versus Waller?

Q. Yes?

A. Yes.

Q. Let me ask you first of all if you're familiar with the proposed State Legislative redistricting plan that was submitted to the District Court by Dr. David Valinsky on February 7th?

A. Yes, I am; as a matter of fact, the Loyalist Committee retained me to develop a series of maps on the districts for Dr. Valinsky, for the Dr. Valinsky plan.

Q. And did you obtain copies of the descriptions of the districts proposed by Dr. Valinsky and also copies—and also observe the census maps with which those districts correlate?

A. Yes; what I received was, and I might explain the process. The Valinsky plan was drawn on a series of county and city census maps of Mississippi and simply done with the colored marker, and because each is—each map is of one county and the districts overlap, obviously it would be much better, much more convenient if the maps put together so as to show the bounds of an entire district so that in doing that, in transferring the information of the boundary of the census map to the county maps published by the Mississippi Highway Department I had to study the census maps carefully and the data for the [8] district as developed by Dr. Valinsky.

Q. O.K., let me hand you these two large bound volumes, one labeled House of Representatives, State of Mississippi, Plaintiff's Proposed Reapportionment Plan—V Plan, and the other one labeled Senate, State of Mississippi, Plaintiff's Proposed Reapportionment Plan—V Plan, and let me ask you to identify these two collections of maps?

A. These were maps that I developed—districts that I developed from county and Highway Department maps and the V Plan is just an abbreviation of Valinsky Plan.

Q. So these maps are the plan—state-wide plan for legislative reapportionment for the House and the Senate, proposed by Dr. Valinsky in his testimony on February 7th?

A. Correct.

Q. Now the base maps that were used in drawing these maps, where did they come from?

A. That was from the Bureau of the Census.

Q. No, the base map that you used?

A. Directly from the Mississippi Highway Department Map Division.

Q. And what are these called in the vernacular of the Highway Department, what kinds of maps?

A. Third scale county maps.

Q. Now, in the case of municipalities, what kind of maps did you use?

[9] A. Well, for the most part, and there are a couple of exceptions, they are maps obtained from various Chambers of Commerce of cities over the state and we only used those where it was necessary to show the bounds in some detail in those cities.

Q. Now, let me just ask you briefly to tell us; you got these Highway Department maps and you saw Dr. Valinsky's descriptions in—according to enumeration districts, supervisors districts and counties and you also saw his census maps. What did you do; just tell us basically what you did?

A. Basically, the idea was to determine the number of counties involved in each district and to then, from a study of the census map, to locate the enumeration districts and other census boundaries such as supervisor districts on the maps obtained from the Highway Department. It wasn't always easy because there has been some districts or what we call county beat changes since the census was taken in 1970, but my familiarity with maps, census maps and the type of maps published by the Highway Department enabled me to, I think, very accurately transfer the districts drawn and described by Dr. Valinsky to these county one third-scale maps.

Q. And have you compared these maps that you've drawn where it outlines the Valinsky districts with the census maps that Dr. Valinsky produced on February 7th and that were admitted in evidence in the case?

[10] A. Yes; as a matter of fact, I had the census maps on which Dr. Valinsky's plan was drawn by Dr. Valinsky, as a matter of—right before me as I developed these, the plans or transferred the plans to these maps.

Q. And what was the comparison between the boundary lines that you've drawn—the Valinsky plan boundaries on the Highway Department maps and the census map; how do they compare?

A. I would say that they are very accurate.

Q. So—so they're the same boundary lines?

A. We're talking about exactly the same boundary lines and I'm not saying it's 100% accurate but for the most part, I would say that I'm very close to 100% accurate.

Q. Did you particularly check the boundaries as they occur in Hinds County and the City of Jackson?

A. Yes, I did.

Q. How accurate are they in Hinds County and the City of Jackson?

A. I would say in Hinds County and Jackson, they are very accurate, 100%.

Q. You checked them over very carefully, did you?

A. Yes; there is one thing that perhaps should be explained in drawing—first of all, I didn't explain that what happens is, I went to Neely Blue Print and obtained some—what they call boundary tapes and these tapes are adhesive and they stick right to the paper. Now in delineating or putting the [11] tapes on to maps of cities, the problem was to put the boundary, the tape, on the streets concerned, but in many cases where, in doing that would have obscured the name of the street, I placed the tape either under or over the street of the boundary so as to preserve, to the greatest extent possible, the ability to identify the boundary by reading the names of the streets. (Asks about maps off record.)

BY MR. PARKER: I would like for these two to be marked as exhibits; now what I'd like to do is actually retain possession of these exhibits and reproduce them and give you a copy.

BY MR. BRYANT: That's fine.

BY MR. PARKER: I'd like to ask that the House of Representatives maps, series of maps, be marked as Exhibit "2" and the Senate maps as Exhibit "3". (Whereupon House of Representative's maps were marked as Exhibit "2" to this deposition, and Senate maps were marked as Exhibit "3" to this deposition.)

BY MR. PARKER: I would like the record to show that these are exhibits and part of the deposition testimony.

BY MR. PARKER:

Q. Now, Mr. Kirksey, have you also drawn proposed state legislative redistricting plans for the House and the [12] Senate?

A. Yes, I have.

Q. Do you have the descriptions of those plans?

A. Yes, and may I explain a point or two about this?

Q. Sure.

A. They are typed up and I really never had a chance to proof them until late Sunday. There are not only some typing errors in it, but there are some changes that I made as I developed the maps from my own plan. Now, to explain that, it is one thing to draw a map, and I use maps of this size, which is a state map, and show very little detail and smaller maps of the state, such as is attached to the back of the printed—the typed copy of my plan, which shows even less detail, thus when you developed the plan on a map, a large scale map, you can often find that what you thought was a very compact district, was not exactly compact and one of the—one of my prin e efforts has been to develop districts that are compact. So I did make, more so in my plan, because, as I said, I was really finalizing it as I made the maps for it, so that the—these state-wide maps may have one or two errors because I'm looking at one last night and the reason for that here in Wayne County is that I made that change on the—the plan as I took a look at the plan on a third-scale map and I didn't like the bounds and I simply changed them as I was making the maps, revised my statistics so that as to be in accord with the plan as revised.

[13] Q. Well, let me ask you to do this, then, Mr. Kirksey; would you please give us your descriptions as they are presently and then you can make corrections as long as you supply a copy of the corrections to Mr. Bryant.

BY MR. PARKER: Is that all right with you, Mr. Bryant?

BY MR. BRYANT: That's fine.

BY MR. PARKER:

Q. O.K., why don't you give us a copy of the descriptions of your districts as they are now, with reserving to you the right to make corrections?

A. Yes, well, O.K., but I will say this, that the—I have with me the original typed copy and if these can just be used

here, then I have no problem with it because—let's see, that's the House of Representatives. . . .

Q. Well, is this copy identical to the typed copy?

A. That was the original, that was the first typing. . . .

Q. And you want to retain the original typed copy to make your corrections?

A. Let's see, now—let me give you one more copy and then I'll try and explain so that—that's the House of Representatives and this is the Senate. That's for Mr. Bryant. What I will show you now is the same typing with corrections marked on it and I did not mark the corrections on the original type because this is done on ease-erase paper and rather than type [14] the whole thing over again, I can simply erase and put in the—where I've made changes, I can put the changes in without having to type the whole thing over. It is quite a job. So this is the original of the Senate plan and the House plan and I have—you have a marked copy of the House of Representatives; this is a correction copy of the Senate. Now, if you don't mind, if I'm to be asked questions about it, I'd rather have the marked copy and let you have these two copies which are not marked for correction. . . .

Q. All right, let me get this straight now. This document that you've just handed me that's labeled Mississippi House of Representatives and has written on the top, "New", now this is the final version of your House plan?

A. That's the final version; it's the—with corrections noted on there in pen.

Q. With corrections? O.K. You want to retain this to make corrections on the typewritten original?

A. Yeah; let me explain. What you have in your hand is a Xerox copy of this.

Q. Um huh.

A. So I made the corrections and the changes on the Xerox copy rather than on the original. Now all of the changes or notes that you see in there are not necessarily changes in the plan but rather I was looking for details, errors in typing such as the omission of colons, commas, periods, and, for that [15] matter, some descriptions were left out. Now the—I developed the plan in longhand and I might say that very few people can read my handwriting, so I wouldn't dare turn that over to the typist to be typed, so what I did was to type it myself and I'm not a good typist

and I make a lot more errors typing than I make in longhand so that I'm not trying to blame Laverne because she is a very good typist, but I left out a lot of the information myself—the data myself in typing it so that she could read it so that the errors were multiplied by the fact that I typed a copy then gave it to her to retype and I left out a number of descriptions and then, of course, she's not infallible; she made a few errors herself.

Q. What procedure would you suggest? Shall we Xerox this and put this in evidence with the right to file a final corrected copy or . . .

A. That would be fine.

BY MR. PARKER: Do you have any objections to that?

BY MR. BRYANT: That will be fine.

BY MR. PARKER: O.K. Do you want a copy of this too?

BY MR. BRYANT: Yeah, if you have an extra.

BY MR. PARKER: Why don't we make Xerox copies of each of these . . .

BY MR. KIRKSEY: Let me, before you do that [16] explain one little feature about the two plans. I developed the plan and when I got to Hinds County, I simply skipped it and went to the next county and it was the very last part of the plan to be developed so you will see evidence of that in the fact that, on the Senate plan, I have—when I reached Senate proposed—I'm sorry; when I reached proposed District #70, I stopped and went to the next. In other words, I jumped the number of districts that I knew were necessary for Hinds County, beginning with #71, and that took me from Hinds County over to Warren in District #83, so I came back. Now, when you look at this plan, on the House plan particularly here—on the Senate plan—I'm sorry, because they were two, in effect, two separate plans, the Hinds County plan on the Senate plan, although it begins about District #30—30, it is, I believe, typed on the very end of this list, for the simple reason that I had developed the plan around—you know, skipping Hinds County, so that when the typist got to that part—I had told her what had happened but she preferred to put it on the back for whatever reason. Additionally, there is a slightly different heading on the Hinds County part than on the [17] districts for other counties for the simple reason that it was much more convenient and since Jackson and Hinds are so much larger than the other counties, much more convenient for me to

work exclusively with census tracts than with supervisor districts and that kind of thing.

(Counsel for Plaintiff obtains copies.)

BY MR. PARKER:

Q. Why don't you describe for us what criterion you followed in drawing these two plans for the House and Senate?

A. Well, you always begin with the equalization of population which is a Constitutional requirement. I proposed to develop single member districts throughout the state for the simple reason that it is the simplest way to delineate districts on an equal representation basis. I took into consideration homogeneous population, that is the social and economic characteristics; I tried to avoid to the extent—to the greatest extent possible the fragmentation of—concentrations of homogeneous population and that includes racial population. I tried to avoid—deliverately attempted to delineate districts that were urban whenever possible and rural, whenever possible. To do this, I used the data developed in the 1970 decennial census of the population, State of Mississippi, by counties and/or cities of the state.

Q. What was the source of your population data for [18] these districts?

A. The Bureau of the Census statistics through various publications and I have in my possession, a print out of all of the enumeration districts of the state and I have had this since the 1971 involvement in the Conner versus—now Conner versus Waller reapportionment.

Q. We know that whenever one constructions a redistricting plan, one has to work from certain building blocks or basic units in the construction of representative districts. What were the units that you employed in the drawing of this plan?

A. Well, the Bureau of the Census enumerates the population on the basis of what is called Census Enumeration Districts and these are very well defined geographic areas with definable and visible boundaries wherever possible. Now, the exceptions would be on—in cases where—I might stop there and say, first of all, the enumeration districts do not cross the political boundaries. That is to say, they don't cross municipality boundaries, they don't cross county governmental boundaries and, of course, they don't cross county boundaries nor state boundaries, so that the enumeration

district would be a geographic area within a county or a city or a beat that has definable boundaries, and in which the population of that geographic area is totaled up or summed up by the Bureau of the Census. The total of all enumeration districts within a city, [19] within a county beat, is the total population, for example, of the city and the total of all those in the county, including the city, would be the total population of the county and so on, so that the total of all of the E D's and all of the counties in the state would be the state population, so that I'm using data, basically that data which was developed at the smallest scale by the Bureau of the Census as a total. The additional information used was that in certain municipalities of the state, principally Jackson, Biloxi, Gulfport—well, all of the coast cities with the exception of Moss Point and Pascagoula, and in Meridian, where block data was available and block data is, for all intents and purposes, an enumeration district in that the population of every block in the City of Jackson is totaled up by the Bureau of the Census so that for all the blocks in the City of Jackson, you know you can determine the population. Now these are the building blocks that I used in the development of the population of the districts that I proposed.

Q. Did you use any population statistics or any population data other than U. S. Census data?

A. No.

Q. So all of the districts that you've drawn are defined in terms of their population based on official U. S. Census data?

A. Correct.

[20] Q. Now we've heard a lot of discussion in past weeks about preserving the county lines. To what extent do the districts for the House and the Senate as determined by your plan preserve or not preserve county lines?

A. The—I think that to a very great extent I have used county lines—the matter of saying preserved, I'm not sure precisely describes what my view of delineating districts; I'd like to use the county line as a district boundary because it is, although in many cases, not a visible thing, everyone recognizes it, therefore, the affect is to have a visible boundary and it is extremely important to be able—not only for the candidate, but for the people who live in a district to be able to visualize the boundary of the district in which they live, so I have used the county boundaries to a very great

extent in delineating districts on that basis. I have not avoid—deliberately constructed districts that lack compactness because of the existence of a county line. Now that may be another way of saying that I didn't regard the county line as being unbreakable.

Q. So your districts do, in some cases, break the county lines or go across county lines?

A. Very definitely; I have a number that cross county lines.

Q. Now why have you done that?

A. Because it was necessary to develop the norm size [21] population for a district. Now, first, I've used the word, "norm", now, let's back up a bit; to determine the population size of a House district is to divide the total population of the State of Mississippi by the membership of the House of Representatives and in this particular case, using the 1970 census, that's 18,171.4 for the—to develop Senate districts is to divide the total population by the membership of the Senate and that, being 52, gives you a district population of 42,632.9. Now to develop districts—house districts with the 18,000-plus population and to develop Senate districts with over 42½ thousand population means that you're going to have to cross county lines. The reason being that the population of counties in the State of Mississippi begins with 2,737 in Issaquena, all the way up to 214,973 in Hinds County. Now there are 82 counties; some 20 counties are around the population of between the 2,737 to around 10,000, so we have a wide variety of county populations to deal with and 82 counties to deal with so to develop districts with norm population is to—it is necessary to cross county lines. In—often times in the delineation that—well, there are many cases in Mississippi, I said there are several cases. I don't know which means the fewer or the less, but there are several cases where we have counties that has—that are within the norm for one House district or one Senate district, but the moment you start delineating single member districts or any other type districts, for that matter, [22] you have set the pattern; you have set a pattern that you can't always alter as you proceed, thus, when you arrive at the county with a norm size population, you may not be able to preserve that county as a district. Is that clear?

BY MR. PARKER: Yes, sir.

A. O. K., so that often times in my plan, I would arrive at

a county that had a norm population and to preserve that was to back up and see if I couldn't come back to it in such a way as not to cross the boundaries, and I found, in trying to do that, that it was too monumental a problem so I just decided that the best thing was to concentrate on delineating districts that are compact and to not worry too much about whether or not I crossed the county boundaries of a county that had a norm size population. In other cases I had no real worry about crossing the county line at all.

Q. But did you make an effort to preserve county lines wherever possible?

A. Wherever possible—that's the best way, as I think I pointed out before, to make sure that you have districts that people can understand.

Q. Now where you were required to achieve equality in population, to cross county lines, how were the boundaries of districts within counties determined?

A. The—on the basis of census enumeration districts and, often times, using an entire beat or several beats within [23] a county and, in the case of Hinds County with Jackson, well, there was only one instance in the southwest portion of Hinds County where I did, in fact, cross county boundaries, so Hinds County is not so much involved as are some other counties. But normally the division of a county was done on the basis of, if possible, and a 1970 beat line and in most cases if I had to get additional population or less population than that contained in the beat, then it was necessary to follow an E D line.

Q. Are there any advantages to using the boundaries of census enumeration districts to define legislative districts?

A. The advantage is, with the exception that I think I've already noted, and that being where the E D line is conterminous with an invisible governmental boundary line, such as a beat drawn on the basis of a land section line. The enumeration district boundaries are visible and . . .

Q. What does that mean, visible?

A. That means you can see it. It's land—they are . . .

Q. It's not a chalk line drawn by the census on a highway?

A. Very definitely not. It is a highway; in other words, they would delineate a line down the street, a stream, and in some cases where there was some features not too well known, a creek or that kinds of feature, they might use a power line, but very seldom. Mostly they're using things

like rivers and creeks and highways, roads, county roads, that kind of [21] thing. Something that you can actually see on the ground.

Q. Now, in defining your districts, did you attempt to achieve districts that are contiguous, that is districts in which all parts of the districts are joined to each other?

A. I have no non-contiguous districts. All of my districts are not only contiguous, but I think to—very close to the maximum extent possible, of compactness which means that they are somewhat rectangular, round or something of that nature. I think that I've—I'm sure that I have no non-contiguous parts to any of my districts.

Q. Are these the descriptions as corrected—with corrections on them, rather, of your House districts and Senate districts?

A. Yes.

BY MR. PARKER: I ask that the copy of the House districts be made the next exhibit.

BY MR. KIRKSEY: You will find a series of arrows or marks on there that were placed on there in red and they will appear, of course, in black on the Xerox copy, and they often just point and they might be confusing that what I was pointing to for the purpose of the typist, was to an omission of colon or comma or something of that nature.

BY MR. PARKER: O. K., this would be—what number, now; for the House would be "4" and the [25] Senate would be "5"?

BY MR. PARKER: Would you hand me Exhibits "4" and "5", please.

(Whereupon said map indicating House districts was marked as Exhibit "4" and said map indicating Senate districts was marked as Exhibit "5" to this deposition.)

(Witness hands exhibits to counsel for Plaintiff.)

BY MR. KIRKSEY: Let me explain the word, "new" up at the top. Did I explain that before?

BY MR. PARKER:

Q. No?

A. I had a mass of data sheets that I used, that I developed on—primarily from legal pads and I used those to type up these copies, then when I did a quicky proof of the copies typed by this office—at this office, I then marked this 'new' so that I could put my typing aside and I did that and

so thereafter, the corrections that I made were actually on these copies that I called 'new'.

Q. So that 'new' doesn't refer to a new plan, but it refers to the corrected draft?

A. Right.

Q. Of yours?

A. Right.

Q. O.K., referring to Plaintiff's Exhibit "4" in the House districts, to what extent were you able to achieve [26] your goal of population equality among the districts?

A. In the case of the House, my greatest deviation from the norm of 18,171.4 was 2. plus 2.96% and a minus 2.79%, and that gives me a total span, that is the greatest difference between—the widest difference between districts would be 5.75%. In the case of the Senate, the largest plus deviation is 2.39% and the largest minus deviation was 2.62%, for a total span of 5.1%.

Q. You say you have in the House, you have no districts that are over plus or minus 2.96% of variance from the norm?

A. Correct.

Q. And on the Senate side, you have no districts that are over plus or minus 2.62% variance from the norm?

A. Correct.

Q. Would you tell us what procedure you followed in devising your proposed districts?

A. The—first, let me say that the idea of developing districts myself evolved from developing what I—thought about doing it for a very long time but after developing a map for the Valinsky plan, I conceived the idea that it would be possible to compact to a greater extent districts beyond what Dr. Valinsky had done. Now, as Dr. Valinsky explains, he used some computer methods to determine population centers and that he worked—and that he then proceeded to develop his plan from [27] those population centers.

Q. Those were randomly determined?

A. Yes. They were determined, I believe, as I understood his explanation, by a computer method.

Q. Random numbers taken?

A. Right, right; well, I don't know anything about computers so the random numbers don't really mean anything to me, which means that I have to explain precisely how I proceeded and that was this. I began—first of all, I deter-

mined that Dr. Valinsky's plan could have been made more compact if he had done it on a regional basis. As a native of Mississippi and a student of Mississippi history, I know that there are geographic areas in the state that are—that are what we would call homogeneous areas. I am from northeast Mississippi, Lee County near Tupelo. Tupelo and Lee County and northeast Mississippi is a geographic area quite different from what we call the delta area. It is also quite different from what we call the east-central area of the state and certainly quite different from what we call the coast area and the southwest area, so I determined in advance that I would develop plans for the Senate and the House based on these five geographic areas. Then I did the very usual thing, I think that most people do and certainly the Bureau of the Census does, is to start in the upper righthand corner. That means that I began to delineate districts from Tishomingo County in northeast Mississippi. Now, from the [28] moment that I start, I somewhat predetermine what all other districts would be like, but then the process was to take the total population, and I'll give you the first county; take the—consider the total population of Tishomingo County in terms of the norm of 18,171 and then to find where it was best, considering proximity of other counties to Tishomingo, that would be Alcorn, Prentiss, Ittawamba and Lee, and to decide where to take the additional population that I needed to complete a norm size district. I decided, in the case of Tishomingo, that I would go to—I would take that additional population from Prentiss County and I determined that simply by studying the E D...

Q. When you say E D, would you...

A. The census E D's...

Q. What are they?

A. The census enumeration districts and the 1970 county beats adjoining Tishomingo in the county concerned and to decide which was—which county to take that population from to make, not only a norm sized district, but to make a compact norm sized district. Now, I then proceeded throughout the state by region; that is to say I delineated from northeast—in the northeast region to the northwestern portion of the northeast region, which would be roughly Marshall County and then, in serpentine or snake-like fashion, I would then turn back toward the east in delineating districts back toward the Alabama line and reaching the Alabama line, then I would go back toward [29] the delta so that then, my last district in the northeast region would be around Lowndes and Oktibbeha County—counties, then I went to the top of the delta. The delta is in sort of an elongated egg shape and so I started at DeSoto County and worked down the delta in pretty much the same east to west serpentine fashion as I used in developing districts for the northeast region, having completed the delta which took me all the way to Warren County, into Warren County, I then started on the—what I call the east central region and that took me to Noxubee County and I used the same east to west procedure and the westward limit would be like Leake or Madison County, then going back and forth to Clarke County. Then I went to what I call the southwest region, which was to say Madison or Hinds County and worked in very much the same manner throughout that region that is basically between the Pearl and the Mississippi rivers. Then, from completion of that region at Walthall County, or Wilkinson County—whichever—where I wound up on the east or west side of it...

Q. Marion County?

A. Marion, well, it's Marion, Walthall, Lawrence; all of those counties in there.

Q. #95 ends up at Marion County?

A. Right. I then skipped over to Wayne County and worked from east to west throughout what I call the coast region to conclude my districts in the two coast counties of Harrison [30] and Jackson, so that the two coast counties—so that my—the district #122 is in Jackson County, which is the southeastern most county of the state.

Q. Did you follow the same procedure for the Senate?

A. The very same procedure was followed in the development of the Senate plan. Now, I've stated that I don't know anything about computer methods. To me, it's a very simple process of knowing what population you have to have to make what I call a Constitutional sized district, meaning to say that districts that have equal population and meet the Constitutional requirements for equal representation. It is a simple process of adding known population; that means census data, to—until you have arrived at the norm population and it's—thus, to me, it's a simple process of adding and subtracting throughout to develop this and this is the procedure that I used, just simply adding to the population

of a county, additional populations that would give me the norm population for a district or subtracting, using census enumeration districts, from the population of a county, to reduce it, a portion of that county to a representative sized district.

Q. Now it is argued in the legislature that counties are the basic unit of Mississippi government; the basic unit for government in terms of the election of officials; the basic unit of government for taxing purposes; the basic units for administrative and governmental purposes and that it's important [31] and necessary to preserve the relationship between these basic political units and their legislative representation. What is your response to that—to that contention?

A. First of all, the bill that was passed in the House, Friday passed; that would be March 14, I believe, states that the counties have been the unit of the state legislature since 1817; I'd like to point out that in 1817, the northern most county in the State of Mississippi was Warren, and of which there were only fourteen.

Q. Fourteen counties?

A. Only fourteen counties in 1817 and upon the readmission of Mississippi into the Union in 1970—1870, I'm sorry, there were about sixty-nine counties. Now, I take a very dim view of the fact of having the legislature comprised of people who look upon themselves as representing a political unit rather than people. I think that they—there should be districts in which the legislators think of their district as people and not as a political subdivision of the state. I will point out that in December, 1956, during the gubernatorial administration of J. P. Coleman, a report was prepared by Dr. Leon Wilber, who was the head of the Department of Sociology at what was then called Mississippi Southern College and is now the University of Southern Mississippi. Dr. Wilber's report shows that since 1890, the counties have been used as an instrument for the disfranchisement of blacks. He pointed out in his study [32] that the combination of counties for legislative districts was done and in such a manner that the blacks were unable to elect representatives. I would—just as a sort of analysis of what we're talking about, I have no problem with using counties to develop districts for the election of members of the legislature, except that I know about this history and most people

who are concerned or study of Mississippi, know about this. This isn't something that only Dr. Wilber knew about. Judge Coleman, for example, is a pretty widely known historian, particularly a political historian, of Mississippi and I'm sure he knew about that in his studies.

Q. You're referring to the division of the legislature into three large areas for purposes of electing of representatives?

A. Right, but not only that. That's one of the explanations that Dr. Wilber pointed out. It is possible, by combining counties, and I'll give you an example of DeSoto County and Marshall County that are combined—were combined by the court reapportionment in 1971, Conner versus Waller; in 1970, according to the 1970 Decennial Census of the Population, DeSoto County has—is within the norm for two House members. It is, and I have the population here, it's about 35,000 population. On the other hand, Marshall County has a population of 24,021, something in that neighborhood. It, thus, has in excess of one House seat. When you combine those two counties . . .

[33] Q. What's the racial composition of those two?

A. Well, I'm coming to that. When you combine those two counties in a district at large election, meaning that all the voters in both of the counties vote for all of the candidates for office, and there were three-there to be three offices filled, that the majority county, in this case, DeSoto, would have a voting advantage over the electors of Marshall County. Now, in . . .

Q. Because of what?

A. Because of the greater population in DeSoto County. Now, as to the racial distribution, in DeSoto County, and I'm just pulling this off the top of my head, my recollection is that the racial distribution or percent of the population is in the 30's, whereas in Marshall County, the black composition is about 62%. Now, the DeSoto with the two districts obviously can negate, and the low composition of blacks can negate the black majority in Marshall County; it's as simple as that. Dr. Wilber pointed to the use of the combining of, I think it was Chickasaw County with Clay County to negate the black majority in Clay County so that you can use these building blocks of one county with a low black population composition and another with a high black composition and more or less negate that. It's kind of like

saying that—I pointed out that it is a convenient thing to use a county, if possible as a unit for election of members to the legislature but it has [34] tremendous potential for resulting in other kinds of things. It's like using an airplane; it has great utility for transporting people and goods but it is also an instrument having the greatest potential for destruction of the human race; all living matter for that means, by transporting bombs. So that the counties in themselves don't mean anything. It's when you begin to contrive means of putting them together so as to disadvantage a region of the state, people by race or certain political factions. This was done, for example, in the congressional reapportionment in which they eliminated Representative Smith in the delta counties by combining him with—putting him in a district in which there were—the incumbent of that district was much more popular.

Q. So it's the combining of the majority black counties with majority white counties of greater population is one of the features of the present plan you object to?

A. Very much so.

Q. Now, how about in the instance of county-wide voting for example, Hinds County where the representatives are elected county-wide. Do you have any objections with regard to any racial effect that that might have?

A. Very definitely. The effect is the very same. In Hinds County, the black population is in excess of 39% of the total and about 75% of that black population is concentrated in a boot shaped area in the City of Jackson. Now, when [35] you have—I simply point that out because I want to come back to it later; when you have a population of 39% or less than half and compound that disadvantage by the fact that the percent of blacks who are voting age, compared with the percent of whites who are voting age is much smaller, you, in effect, have reduced in Hinds County, for example, the black composition, that is the black electors to white electors, potential and actual, to less—to about 30% or less. So I object to it in that if I believe the Court's description of practicality disfranchisement—this, I believe, is enunciated by Judge Coleman . . .

Q. That was where a beat from one county would be joined with another whole county?

A. Yes, that is his description, but if you join a beat with a whole county, so that the beat is smaller than the whole

county, that operates the very same way as putting a small county with a large county; putting a minority people with a majority people. It is exactly the same thing and I don't see how the Court, or anyone else for that matter, could draw a different conclusion; that it is not operative in the case of the racial composition thing.

Q. So, what is your conclusion about Hinds County?

A. As to Hinds County, that the black vote is negated; the blacks are disfranchised by a county-wide election and that's in addition to the fact that I have serious [36] questions about the value or the equality of having twelve people represent me when Constitutionally I am entitled to one and when I don't know who those people are who are said to represent me. They don't relate to the black community and since the number of representatives is so large, very few people, and I would doubt that anyone except the person who is dealing directly with the names of the representatives every day would be able to sit down and name all of the representatives of Hinds County. Now I have conducted a little survey; now I intended to make it an elaborate kind of thing but I've only developed about—gotten the result back from about sixteen people, and the largest number of representatives and senators of Hinds County, named by any one person, was seven and that person crossed up representatives and senators.

Q. Didn't know which was which?

A. Which was which. Everybody named Con Maloney; most of them said—you know, what's his name, the GE man. Everybody remembered Con Maloney, not because he is a representative or a senator but because he is always on television advertising his business. He was the one person who was named throughout and I would say that out of the fifteen, he was correctly designated a senator on eight. On the others, about five of the others, he was shown to be a representative and there were a couple of sheets that didn't classify any of them as to which—the actual office that they held.

[37] Q. Now do you know the racial composition of your proposed districts?

A. In a general sort of way; as opposed to Dr. Valinsky . . .

Q. Have you developed specific figures?

A. No.

Q. O.K., then how can you tell whether or not your pro-

posed single member districts will be an adequate remedy for what you've described as the dilution of black voting strength under the multi-member district scheme?

A. Well, first of all, if you have single member districts and unless you deliberately gerrymander those districts, that is to say you go through a black community into a white community to equalize the population . . .

Q. Or slice it up?

A. Yes or fragmentize one or the other, I hold that if you delineate compact districts, that you will unavoidably create districts that are majority white, some are going to be majority black. You will unavoidably come to that because of the distribution, geographic distribution of the racial population in the state and most of that will occur as far as black majority districts is concerned in the delta and the southwest region of the state, and in certain cities like Jackson where there is a very high concentration. Now, with the exception of Jackson and cities of the delta, there is [38] almost no possibility of black majority districts in my plan.

Q. Now, are these maps that I have posted here, are these maps that you've prepared showing your districts?

A. Yes.

Q. Would you just show us and name the districts or the districts that you would anticipate might have a possibility of where the black voters would be able to elect legislators of their choice from these districts, according to the districts that you've drawn, just to give us some examples?

A. Yeah, well, let me point out one other thing here before I do that. There is another consideration here. You can have, it is quite possible to have a black majority district of 60% or better and still, with no possibility of electing a representative, for the simple reason that, taking for an example, the district #30 on my House plan which incorporates a part of Tunica County, Quitman County and Panola County. Those—the blacks who live in that district or proposed district, are primarily farm workers and since that is a delta area, primarily plantation workers. They have an average education—school—number of school years completed of less than six. If they are plantation workers and they have very low educational achievements, they also have no money and one thing we do know about political campaigning is that it costs a lot of money, so the blacks in

that district, in my view, will hardly have enough money or be able to corral enough [39] money from any source to project a viable campaign, a campaign that will elect. That fact exists throughout the delta meaning that basically the greater opportunity for blacks to elect would be in urban areas, Clarksdale, Greenwood, Greenville, and possibly in counties like Bolivar and Coahoma, to a certain extent in Washington and Sunflower and Leflore where there is an overwhelming black majority and they do have certain small or large urban areas in there that they might be able to elect, but I wouldn't count any area that is rural in the delta as a positive and absolute certainty that you're going to elect a black representative from that district. I—I—I'd have to see it first. Some will be able to elect because they have been working at voter registration and have been doing political action kinds of things for a number of years. That was the case of Holmes County where Representative Clark was elected and an intensive voter registration campaign was conducted there for many years, prior to his running for that office. Now, that has not been done throughout the delta area so, in answering your question, I would point out that the potential is there, but that doesn't necessarily mean anything for, I would think that there would be a positive chance to elect in the northeast region district #6, which is Marshall County basically. I would think that the district #34, which is Clarksdale, and there is no certain to that because the population of Clarksdale is pretty close to 50-50, but I am [40] attaching some importance to the fact that there are a number of blacks there who have been politically active; that there is a possibility that they could elect, in district #34. Greenwood, I divided—Greenville, rather, I divided into two districts; one I called the central city district and that, on—this would be district #46, which takes in the downtown area, and in most cities, not just simply in Mississippi, but every place else in his country that I've been, the blacks tend to be located near the business and industrial center of a city, so I took that into consideration when I delineated two districts in Greenville; I developed a central city district and the remaining district, district #45, took in the other areas of the city, close to the suburbs. So, in proceeding from that, I think, very frankly, that the district #41, which incorporates portions of Carroll, Leflore, Holmes, and, well—Holmes County, would be one not just

simply because Holmes is the home county of Representative Clark, but because there is an overwhelming black majority population in that area, and I don't have figures, but I know that as a matter of fact; I know a great deal about the distribution of racial population throughout the state and district #40, which incorporates a portion—the southern portion and eastern portion of Greenwood, has—perhaps of the whole thing, the greatest potential for the election of a black representative. I would go down to—there's a possibility, don't get me wrong; I'm not saying [41] that the blacks are just out of it in other areas; they could possibly mount, but I have to take into consideration the time of the election—this year's election. There's a time element and everyone who is involved in trying to disfranchise blacks from electing their representatives, realize that and the longer a settlement of the reapportionment matter takes, the less are the chance of blacks who don't know where to campaign or organization now is going to be in terms of mounting an effective campaign, so that I'm saying that, with the exception of the few districts that I've named, there are, in my view, very little opportunity—I haven't finished because there is a possibility in Vicksburg, there is a possibility . . .

Q. District #83?

A. District #83. There is a possibility and a very positive one, in fact, almost, I would say, an 80% potential for the election, at least three representatives from the Hinds County districts in the City of Jackson, and districts in the southwest, particularly #87, which incorporates a portion of Claiborne, all of Jefferson and a part of Adams County, district #88, which is in the northeast portion of the City of Natchez, principally, has the potential of electing a black representative, and when you've gotten passed that you've had it. There is—there is a remote possibility that the blacks in the central city district of Meridian might elect, but I have no way of ascertaining that because the [42] district in Meridian is very—the population is not as compact racially as it is in Jackson. There are spotty black and white housing communities in Meridian and it's—unless you sit down and actually develop a statistic, you will not know for sure and I haven't done that so I don't know for sure, but beyond that, I would say that the chance of election of blacks to the House of Representatives, using my House plan, is practically nil.

Q. How about in the Senate plan; how many districts would you say, taking the Senate plan as a whole, would there be a possibility in which the black voters might be able to elect senators of their choice?

A. Well, I hadn't exactly considered it in that manner, but let me just sort of guess at the possibility.

Q. Estimate?

A. Estimate, O.K., and I would have to start with Jackson on my plan. I think that there's a possibility of electing two senators from Jackson under my plan, one . . .

Q. The City of Jackson?

A. The City of Jackson, you know, Hinds County, but principally this would have to be done in the City of Jackson. I think there is one district that I'm almost—I couldn't explain why or why it would be elected from that; put it that way. The other district is not as—as what the politician would call as safe as that, in terms of the black [43] potential; it's not a safe district for the purpose of electing a black senator, but there's a great black majority there I'm sure. I would say that on total, I can't see more than four or five blacks being elected to the Senate, using my plan. First of all, the economics is very, very important and the senatorial districts are bigger, more people; that means greater areas than the House districts, and it costs a lot more money to mount a campaign.

Q. O.K., let me ask you about that;

BY MR. BRYANT: Off the record a minute. (Whereupon deposition was recessed for lunch and continued after that time.)

BY MR. PARKER: Back on the record, under oath.

Q. Mr. Kirksey, have you analyzed the economics or finances of running in large, at large multi-member districts as opposed to running in single member districts?

A. In terms of what it costs, the actual dollar and cent, I would say I haven't gone to that extent, but I'll try to explain that this way. You have several ways of campaigning, one being—that is direct contact and that's the age old method of grassroots, door-to-door type of campaigning that would be perhaps the least expensive but it would take—require the longest length of time to achieve anything from that kind of thing. People are getting away from that today [44] and they're going more to the electronic media; television is the most viable means of reaching the largest number of people in the shortest time, along with radio, but

then there is the matter of printing. Now, I don't know, really, what an announcement would cost on television for any length of time. I've never used it and I called in, I recall, once or twice about the prices and the only thing that I can remember about it is that it was, as far as I was concerned, prohibitive. I think I pointed out before that I spent somewhere in the neighborhood of $75 to $80 on spot radio announcements in a matter of a two day period at the end of the campaign. I think maybe the answer to that is to say that unless you have a lucrative source of campaign funds, that campaigning is sort of out of the reach of people who are going to campaign primarily among blacks or/and the poor.

Q. Have you analyzed it to determine whether this has any racial effects?

A. Well, definitely; that's the problem. Maybe I'm not answering the question the way you asked it, but my view is that most of the candidates who get elected are people who are supported by Chambers of Commerce, people with means. It is much more—we know, as a result of Watergate, it is much more convenient to get money for political purposes from a few sources in large amounts. It can be done quickly and conveniently but when you have to depend on the nickle and [45] dime source, it'll take you forever to get enough money to do anything with and it consumes a lot of time. So the economics of campaigning is that, first of all, if you don't have adequate money for campaigning, and maybe I could explain it by saying now that the most prestigious office in this state, political office would be that of the Governor, but if you have kept up with the news lately, there have been very few people filing to run for that office because most believe that William Winter has all of the sources of campaign funds sewed up and they believe that it is going to take so much money that you would have to get it from a few sources. It is shut out.

Q. Is there a difference in the economic status among the whites and blacks in Mississippi?

A. Very definitely. Let me point out some—try to answer that with some below poverty level statistics. When you consider the number of—and I'm going to use some round figures within the area of the accurate figure determined by the Bureau of the Census. The number of black families who, in Mississippi, who earn below the poverty level is

about 59%, but when you take in unrelated individuals along with the families, the percentage runs up to 67%. Now, the number of whites in either of those categories would be under 20%.

Q. Number of white families under the poverty level according to the census report is 15.9%

[46] A. What I remember is it is below 20, in dealing with a lot of these figures and I have developed some statistics in this connection, not necessarily in connection with the political situation but in terms of the ability of the state to support a vital education program.

Q. What effect does this have on running an at-large multi-member district?

A. I think I've stated before that the larger the district, the more expensive the campaign is going to be obviously, because for sheer miles of area to cover it increases the cost. If it increases your time it increases your costs, thus, if you have to run at large as in Hinds County and in innumerable other counties and districts over the state, you simply put an additional cost burden on the candidates.

Q. What effect does this have with regard to race?

A. It has the effect of giving the tremendous advantage to white candidates who have a much more lucrative source of campaign funds.

Q. Including their own incomes?

A. Correct. On the—well, I'd better not try to quote the per capita income because I would rather do that if I had the figures before me, but I would only say that there is a very, very substantial or very wide difference between the per capita income of blacks in Mississippi and that of whites, so that very definitely gives the advantage to the [47] whites.

Q. Now, have you examined the plan that was enacted on Friday by the House of Representatives which established in the House, two representatives per supervisor's district and two at large from Hinds County and supervisory district residency requirements and at large voting for Harrison, Jackson, George Counties?

A. To some extent, yeah, I've looked it over; I wouldn't say that I've really done any detailed study of it, except that I do know that there is a residency requirement by beat for all of three counties, and they're in numbers—in like Hinds County, for example, there would be two repre-

sentatives running from each beat and two county-wide and I think in Jackson where there are—Jackson being combined with George County, there are six representatives from that—the final district in terms of numbers, district #46, there are six House seats and they have designated a representative per beat in, I believe, in Jackson and one, I think, as running at large. There are seven in Harrison County and, I don't recall specifically how that arrangement is, but I believe it's one per supervisor beat and then there would be two at large.

Q. Does this new bill, I think it's House Bill #1290, passed by the House, does this satisfy your objections to the multi member districts?

A. It just magnifies it, in fact.

[48] Q. In what sense?

A. A multi member district is a multi member district. To reduce the number of the size of the multi member district in Hinds County does not remedy the problem. In the first place, the districts currently in use in Hinds County are malapportioned; secondly, they are racially, very definitely racially gerrymandered and, so to then run at large candidates means that the advantage would very definitely, in every beat in Hinds County, as presently constituted and as proposed, this matter's presently before the court.

Q. You said at large candidates; did you mean by district?

A. By district; that's at large because, with the exception . . .

Q. At large, by districts?

A. At large by districts . . .

Q. We have to distinguish between running in a supervisors district and running county-wide. We usually refer to county-wide as at large and by district as by district even though it's different.

A. O.K., let me set forth, then, what the plan is for Hinds County. The plan is to run—the number of senators from Hinds County is exactly the same as the number of beats, five, so that as far as the senate districts are concerned, we would have five single member districts, but then [49] the plan is to have the twelve representatives running; two from each beat totaling ten and two from county at large. Now the two from—there would be no division within a beat for the two who are running in the beat, so they'll run

beat at large. That's an at large election any way you want to look at it. It's different from the county in that you're taking something like a fifth of the county.

Q. So your objections to that are?

A. My objections are the same as for any other multi member district. In the first place, the electorate does not have a clear choice as to representation, and I don't think that you can put two people together and say that this constitutes one representative. You see, my view is that each person is entitled to one representative in the House and one representative in the Senate. Now when you try to equate twelve representatives from Hinds County as one representative for each person in Hinds County, I don't think that can be done. I don't think that there are any studies which clearly equate two or more representatives with one in terms of what it means, really.

Q. Now did you say that the present supervisors districts in Hinds County are malapportioned?

A. They're malapportioned and racially gerrymandered and the gerrymander is . . .

Q. How about the districts proposed by the [50] Defendants? The Board of Supervisors, the new Board districts?

A. The very same thing. They've only maneuvered the lines; in terms of malapportionment, they are not malapportioned but the racial gerrymander is still there.

Q. Now how about for Harrison County and Jackson and George, I believe the House Bill proposes residency requirements by supervisors districts but at large voting, county wide voting. Does that meet your objections?

A. Sure.

Q. I mean does it satisfy your objections?

A. I object to it on the grounds that in Harrison County, you have serious malapportionment.

Q. Among what?

A. In the supervisor districts. One district, I believe it's district #5, has more than twice the population, 1970 census, of district #3; that is, some—in excess of 40,000 population for beat #5 to about 17,000 for beat #3. Now no one knows, at this point, as far as I know, what the beat population is in Jackson County for the simple reason that that county was redistricted on the basis of registered voters and since no one has taken the pains to ask the Bureau of the Census apparently to reenumerate the population on the

basis of the new supervisors districts, no one knows, as far as I know, what the beat population is in Jackson County as the beats are presently drawn. Now I would assume that—well, [51] I just can't believe that you could get equal population based on registered voters; I don't think it's possible. You may come reasonably close. Now, Harrison-Jackson are kind of like well, most of the southeast and coast counties along with many in the northeastern portion of the state have very low black population composition. The redistricting on the basis of voter registration in Jackson County, since there are only about 17% black, would assume that the whites are uniformly registered over the county and that, therefore, you'd come up with perhaps more or less equal population, but there has been, since the installation of the shipyards down at Pascagoula, an influx of blacks into Jackson County to the extent that I'm sure it has more than doubled since 1960, that does not mean that the percentage of the county has increased substantially because Jackson County's population has nearly doubled since 1960, which means that composition-wise, the black population remains pretty much the same but total-wise, the black population has increased. But what it means in terms of supervisors districts is that, just as in Jackson and most other cities of the state, and elsewhere, blacks are usually in the sort of a ghetto arrangement in their own community and that means that when you delineate districts on the basis of registered voters considering that blacks, according to my study, are only about 50% registered to vote, means that you could make a sizeable area—error where there is a concen-[52] tration of blacks as is in Moss Point, Mississippi.

Q. Now we've heard a lot about changing the precinct boundaries. You've analyzed both the Valinsky plan for the House and the Senate and your plan, of course, for the House and the Senate. In Hinds County, does your plan or Valinsky's plan require changing of any of the precinct boundaries in the City of Jackson?

A. Yes.

Q. Whose plan and how much?

A. Frankly, I haven't counted the number of precincts that my plan nor Valinsky's plan would split. I would venture to guess that we're somewhere in the neighborhood of being close to one another in terms of the numbers. He may have fewer numbers, but I don't have any problem with

splitting precincts, particularly in an urban center like Jackson, because there is no monumental problem created for the Circuit Clerk. He has the precincts delineated on the basis of streets and he should know very easily who is east or west or north or south of whatever street the boundary line runs on, so it would be a simple matter for him to adjust the precinct population without going into a voter re-registration business, so I really don't have any problems with that in—with splitting the precincts in the City of Jackson nor, on the other hand, do I have a great deal of concern about splitting them elsewhere in that most of the boundary lines that I've drawn [53] and most of those that Dr. Valinsky's drawn are on what I described before as visible boundaries, so the Circuit Clerk should know what area—whether the people live east or north or south or west of a given creek or a given highway or what have you so I don't see a monumental problem there in terms of adjusting the poll books to reflect the number of people who are actually in a precinct.

Q. How long do you think it would take to put your plan into effect?

A. That, I think, would depend on the expertise that the Circuit Clerks over the state have in—with—first of all, how well they are oriented to reading maps, because it would be a deal where it would be much handier, the work could be more quickly done if the Circuit Clerk was well acquainted with map reading and could determine from the voter registration books and from his poll books, whether or not these—this block of voters is east or west of that line and make the adjustment and therefore, I really couldn't estimate how much time would be required and I think it really depends on whether or not that Circuit Clerk would be willing to get people working in his office if he does not have the ability to do it, who can quickly adjust the precincts—the population of the precincts; that is put the people in the right precinct. Let me point out that here in Jackson, here in Hinds County, because it's just outside of Jackson, I had the print out of [54] all of the registered voters in the Jackson area and I have found, in that print out, man and wife living in the same household, voting in two different precincts. The main reason is that the precinct boundary concerned is invisible. The Clerk doesn't know where it is on the ground nor do the people.

Q. Do you think your plan could be put into place between now and the August primaries?

A. I would think so. If I assessed the intelligence of the Circuit Clerks as being normal, or above average or average, I would think that there should be no real serious problem in that length of time. I would think, rather that it would be a much bigger problem if a voter re-registration was required, because, first of all, that would take a great deal of time giving all the eligible voters time to come in and re-register and then organizing your books and in many cases like Hinds County where they have them on IBM cards, it takes a good deal of time. In my—my method would require simply shifting the cards, if you're using IBM cards, from one precinct to another.

Q. Now, these two maps that we have here, state wide maps, who prepared these maps?

A. Those maps were. . .

Q. The lines on the maps?

A. The lines on the map?

Q. Yes?

[55] A. I drew those lines.

Q. What do they reflect?

A. They reflect the boundary of the districts that I delineated; the single member districts for the House of Representatives and single member districts for the Senate, State of Mississippi.

Q. And the base maps; what are the base maps?

A. The base maps are actually census maps. I'll explain—there is a census publication, it's a blue publication, I think we have copies here, if I may grab one. This looks like one. It is a publication that has the State of Mississippi divided into three sections. That's it.

Q. Read off the name of the publication.

A. "Number of Inhabitants of Mississippi in the United States Department of Commerce, Bureau of the Census, (PC-1-A26) Mississippi." In the very back of the publication, I hope it's still there, pages 26-27, 26-28 and 26-29 are maps of the State of Mississippi showing the county boundaries and the supervisor beat boundaries and the boundaries of certain municipalities. It must be explained, however, that these are boundaries, or beat boundaries, that is, that were—for which maps were submitted to the Bureau of the Census prior to April of 1970. In short, the Bureau of

the Census developed all of its plans for conducting a census long-before the census is taken and it has on hand, at the time the census is [56] taken, just thousands and thousands of maps. This is a composite of the counties of the northeast, composite of the counties of Central Mississippi and the coast. Now, I started out to say that the beat lines shown on these maps are not necessarily the beats that were used as of April, 1970. For example, the beats currently in use in Hinds County were approved by order of Judge Cox in H. B. Smith versus Hinds County in December of 1969, but the County Board of Supervisors did not submit that map—of the new districts to the Bureau of the Census and they sent—the Bureau simply took the census on the basis of the existing beats, that is, beats that were existing at the time that they assembled all of their maps.

Q. Before December of 1969?

A. Correct.

Q. Would you mind showing that to Mr. Bryant, please?

A. Now, the question, though, had to do with where these maps came from?

Q. Yes?

A. Now then, I took that book down to Mississippi Engraving and had them to blow up each section of that map and to make what they called kodaline copies and it's really, to put it—to describe it otherwise, would be to say it's kind of like Xerox—Xeroxing copies, but it's done by photo process, filming, which also is, in part, a Xerox process. After [57] blowing it up, I, then, pieced—he had to blow it up—blew it up, of course, in three sections, and then I just simply pasted the sections together and that's what we have here, are three sections pasted together to make a full map. That is the source of the map and again, the source of the boundaries in red or violet, whichever, is—are lines that I drew on the map.

Q. And these reflect the boundaries of your proposed districts?

A. Correct.

BY MR. PARKER: I'll ask that the House plan be marked as an exhibit, Please. What I would like to do is to retain these in our custody and make copies and I will give you a copy.

BY MR. BRYANT: That will be fine.

(Whereupon Mr. Kirksey's plans for House of Representa-

tives as shown on map was marked as Exhibit "6" to the testimony and Mr. Kirksey's plans for the Senate as shown on map was marked as Exhibit "7" to the testimony.)

BY MR. PARKER:

Q. Now, have you also drawn the boundaries of your districts on individual county maps?

A. Yes, I have, and those counties, where required; I might explain that in developing a map plan of the [58] districts on a map, a third-scale map, if I did it so that I had a large number of districts per page, well, it would be, in my view, too difficult to handle so—I, what is shown here is a limited number of districts per page and these pages, in the case of these books that bear my plan, are roughly 25 x 30 inches, so, therefore, the number of counties that I could place, put together to illustrate districts are rather limited; in other words, except for—well, in most cases, you will have just three or four districts.

Q. I hand you a volume which is labeled "House of Representatives, State of Mississippi, Plaintiff's Proposed Reapportionment Plan-K Plan," and ask if you will identify that?

A. This is the plan that I drew and it appears on the state wide map there and the K means Kirksey. The—it was done in the same manner that I developed the map for the Valinsky plan.

Q. O. K., you used State Highway Department third-scale maps?

A. That's correct.

Q. And for municipalities, you used Chamber of Commerce maps?

A. Chamber of Commerce—now, I mentioned that there was one difference. I had difficulty getting Chamber of Commerce maps for the Biloxi-Gulfport area, so the Valinsky plan [59] we had some books, that is, pages, sections of the City of Gulfport, Biloxi, Pass Christian, Long Beach and which appear in the Census Bureau as D'Iberville and today it is called North Biloxi, and a portion of Ocean Springs in Jackson County. Now, I was not able to get any of those maps when I finally got time to do my plan so I used a Bureau of the Census tract map for the coastal cities from Pass Christian through Gulfport, Biloxi, into Jackson County at Ocean Springs and that would be this.

Q. Now, what are these? These are not census tract maps, there are what? Block maps?

A. These are both census tract; they show the E D's and they show the blocks, and every block—all the blocks are numbered.

Q. But this is out of the block statistics publication of the Bureau of the Census, am I right?

A. Right. All the block population—first of all, the blocks are numbered. These numbers can be found in the block statistics publication for this census tract area and you simply determine the population for this block by looking first in Census Tract #10, then look for—you don't even look for the E D, because it isn't there; you look for block #304 and they give you the population for that block. Now both my House map of the coast cities and my Senate map are these census tract maps. Now because that map is done—printed by [60] the Bureau of the Census in black and green, I decided to use still another color, so in each case, the Senate and the House, the boundaries will be in red tape or red striped tape.

Q. O.K., are these your House and Senate plans?

A. Correct.

BY MR. PARKER: The House plan will be marked as the next exhibit, Exhibit "8", please.

(Whereupon Mr. Kirksey's map of the House plan was marked as Exhibit "8" to this testimony.)

BY MR. PARKER: And have the Senate plan marked as Exhibit "9".

(Whereupon Mr. Kirksey's map of the Senate plan was marked as Exhibit "9" to this testimony.)

[61] Q. Mr. Kirksey, so that the record may clearly reflect what we're referring to, let me hand you a publication entitled *Block Statistics, Biloxi-Gulfport, Mississippi, Urbanized Area Census* Publication HC (3)-132 and ask whether you used that publication in your accomplishment of your plan and/or the maps in the back of that publication?

A. Yes, I did. This was the publication that I relied on. There is another publication that we should get. This publication you must use if you're going to use block data.

Q. For what?

A. For the delineation of districts. If you are going to run a district line down a street where there is no ED

boundary, that is, you're going to deviate from the enumeration district boundary, then you must use this publication to determine the population in that area. Now, in the back of this publication are several maps and these are precisely the same maps that I used for the coast cities, and they are in several parts—about six parts, I believe. Each part taking up only a certain portion of the cities along the coast; that's from Pass Christian, Long Beach, Gulfport, Biloxi, North Biloxi. On the map it shows as D'Iberville and Ocean Springs.

BY MR. PARKER: Since this is an official census publication, since we seem to have so many [62] of them here we can just put that in evidence or at least mark it as an exhibit to the deposition.

(Whereupon said document was marked as Plaintiff's Exhibit "10" to the testimony of Mr. Kirksey.)

Q. Let me ask you one other question, Mr. Kirksey, about the definition of these districts, Representative Barefield and others keep saying that according to the definitions of these districts that you and Dr. Valinsky employ that they are located—that they are residences which are only in one place are actually located in two or more legislative districts, for example, I think Representative Barefield refers to the fact that he resides in a particular enumeration district which might be placed in one legislative district and then lives in a supervisor's district which is according to your description and Dr. Valinsky's description located in another legislative district and he questions how he can be actually residing in two legislative districts. Would you explain how that might occur on the basis of the designation of the legislative districts, the method employed by both you and Dr. Valinsky.

A. I listened to Representative Barefield's testimony and I just simply can't comprehend what he is trying to claim. I understood him to say that he could not determine from the map his place of residence because in the Valinsky plan and he did not have my plan to study at that [63] time, where he lived because according to the Valinsky plan he was in a beat numbered, a numbered beat that does not consist with the beat number presently used. Now, as I recall Forrest County was redistricted after the 1970 census was taken. Consequently, the district shown on census maps showing enumeration districts and county beats is different from the numbers presently in use, but I cannot for the life of me

see how that would confuse a leader of the Legislature. It's just unbelievable. It's an unbelievable expression of dumbness, stupidity.

Q. What you're saying is that the supervisor's districts as they appear on your descriptions or [sic] supervisor's districts as they existed in 1970 when the census was taken?

A. Correct and also a great number of counties throughout the state have been redistricted since the census was taken in 1970. If you cannot relate, cannot look at a census map and realize, let us use Hinds County for example, we're sitting here now in what was in 1970 based on the information that the Bureau of the Census had, supervisor District "1" which is now supervisor District "5". Now, if a person of reasonable intelligence should not be confused by that simple fact, that the data used in the Bureau by the Bureau of the Census relates to a situation in 1970. What Representative Barefield's talking about is that his district has another number now, as I understood his testimony and I [64] don't see where that should confuse him in the very lease. [sic] If he is confused in his home county by census data, he's not qualified in my view to even talk about reapportionment and redistricting which has to take into count [sic] census data that was compiled in 1970.

BY MR. BRYANT: Will you note our objection to that statement.

BY MR. PARKER: I don't have any further questions at this time.

EXAMINATION BY MR. BRYANT:

Q. Mr. Kirksey, have you arrived at a percentage in your plan of the county lines which have been broken in the use of your plan?

A. No.

Q. Can you give me an estimate of how many county lines have been broken in drawing up the district, let's say for the House plan?

A. Probably the best thing would be to just simply count.

Q. Would you do that for me?

A. In which plan?

Q. In the House plan, just start up at the top.

A. Okay, may I make a suggestion?

Q. Certainly.

A. That the easiest way to do that would be to [65] tell you which counties are not broken.

Q. All right, if you will do it that way then.
A. Itawamba is not broken, Tishomingo.

BY MR. PARKER: What is this House or Senate?

A. This is House. I'm going straight across, I started somewhat south of the northern portion of the state, but I'll go across west and back east in serpentime fashion. Pontotoc is not broken, Monroe County is divided within Monroe, County is divided within Monroe, but there are—it is not otherwise divided, the division, however, includes a small portion of Lee County, Yalobusha County, Montgomery County, Noxubee County, Leake County, Jasper County, Clarke County, Jefferson Davis County, Jefferson County, Perry County, Green County, George County, that's it.

BY MR. PARKER: Did you count Hinds?

A. Hinds County on the House plan, I'm sorry, I missed that. Very frankly, I might have—looking at a conglomeration, I may have missed.

Q. But that would be pretty close?

A. Close. Now those are counties whose boundaries are not crossed by district boundaries but it does not mean that they are not combined with other counties.

Q. Right, I understand. Could you do that for the Senate plan?

[66] A. Okay, Tishomingo, Tippah, Benton, Marshall, De Soto, Tate, Union, Pontotoc, Itawamba, Monroe, Yalobusha, Grenada, Carroll, Montgomery, Webster, Noxubee, Holmes, Kemper, Lauderdale, with this—there is a District "26" inside Lauderdale County, which means that it's inside of another larger District "27", it's exclusively within the city of Meridian.

Q. Okay.

A. Newton, Scott, Madison, Claiborne, Copiah, Smith, Jasper, Clark, Covington, Franklin, Jefferson, Wilkinson, Amite, Marion, Lamar, Perry, Greene, Hancock, that's it.

Q. Mr. Kirksey, I believe that you testified that your plan would not require a re-registration, do I understand that correct to be in any situation—re-registration of voters?

A. I think I qualified that by saying I'm assuming that the Circuit Clerks over the State would have the expertise to transfer names from one precinct to another without requiring that person to actually show up or if a precinct had to

be renamed or renumbered that that would create no particular monumental problem for the Circuit Clerk.

Q. In what areas do you think of there would be some problems?

A. Well, personally I don't see any.

[67] Q. You don't see any throughout the entire State?

A. No. I don't see any monumental problems or what W. D. Neal called insurmountable problems.

Q. Let me see if I understood your testimony. I believe you testified that your plan was based on the 1970 census figures and apportionment maps, in other words, you're not taking into consideration redistricting since 1970 where certain counties have been redistricted?

A. The census data does not reflect anything after April of 1970.

Q. So your plan is based on that, correct?

A. Correct.

BY MR. BRYANT: I have no further questions.

A. I would like if I may—

BY MR. PARKER: Do you have something further?

A. Yes.

BY MR. PARKER: Go ahead.

A. I worked very hard on this and I just insist on putting it in.

BY MR. BRYANT: Go right ahead, I have no objection at this time.

A. My data is kind of scattered around here now. Here it is way down here. I would like to say a little bit more about the 1971 reapportionment by the Court which is the [68] current plan under which the Legislature is apportioned and to show in the record that the Legislature in 1973 adopted that plan in exactly the same manner that the Court apportioned the Legislature and I believe at a different time they added residency for candidates in Hinds County by beat very much in the same manner as the Legislature passed last Friday, March 14, then at a later date as a result of the, I believe the Virginia decision by the Supreme Court they rescinded that, if that's the proper term to use, act and went back to the original Court apportionment. Now, with the exception of Hinds, Harrison and Jackson the proposed reapportionment of the Legislature

by the House of Representatives on March 14, 1975, is, as I understand it, precisely as the Court reapportioned the State in 1971. I bring this up because when the North Dakota reapportionment decision was rendered by the Supreme Court, I think that's Chapman vs. Meier, the Attorney General of the State in a newscast stated that Mississippi was, and I'm not trying to quote him directly, in a good situation in that the Legislature had simply adopted a Court plan, therefore it was safe. A few days later, maybe a week or so later, there was a bearing on the Conner vs. Waller relating to the reapportionment of the State of Mississippi and the Attorney General then having at that time understood that the decision of the Supreme Court was directed more at the reapportionment done by [69] appellant and District Court. The Attorney General then tried to show through Representative Barefield and others that the plan adopted by the Legislature 1973 was not a Court plan because the Legislature adopted it, but the Legislature's plan. Now, that plan had massive inequities in it when adopted by the Court and that did not lessen the fact of inequity by its having been adopted by the Legislature. I have pointed already to the fact that the county unit had been a convenient method used by the political powers in the State to disfranchise black voters and it works the same way for poor whites as it does for blacks, but certainly it works against the blacks in that certain counties can be combined in certain ways so as to make it difficult for blacks to elect representatives of their own choosing. It further disfranchises them in terms of the size of the district using multiple counties or county wide districts. Now, I have analyzed to show that there is also malapportionment. I have done an analysis on a couple of—about three counties and I have tried to relate them here. In the House District "4" ordered by the Court in 1971 adopted by the Legislature in 1973, it's a district comprised of Itawamba, Lee and Monroe Counties, there are five seats designated for that district. The 1970 census population of that district was 97,038. I want to compare that district with District "46" which is Jackson and George Counties on the coast. Jackson and George [70] combined have six seats with a population of 100,434. There's a difference of one representative involved here and the population difference should be 18,171.4 but when you subtract the population of District "4" from

the population of District "46" you have 3,396. Now, that is a—that figure is only eighteen per cent—18.6 per cent of a norm district. That is a big difference there between District "4" with five seats and District "46" with six seats. The next comparison would be District "46" with neighboring District "45", Harrison County. Harrison County's District "45" has seven seats assigned to it. The population of Harrison County is 134,582. If I subtract the population of "46" 100,434 from that I come up with an astronomical 34,148. That population deviates from the norm for two House seats by almost 6.04 per cent. In fact, the difference is two norm districts between "45" and "46" but the Court and the Legislature assigned to Harrison County just seven seats. Thus, it is one seat away from Jackson and George, but it is two seats away in population. There is another problem in this whole thing of multiple county, multiple number district that I would like to speak briefly to right now and I'm going to—I have selected District "4" again and my reason for doing that are many but mainly I'm a native of Lee County and I was born and reared to age twenty-one just outside of Tupelo, about four or five miles out of Tupelo. So I know a great deal about [71] that particular area. I want to relate this to what the Court in its order of May 18, 1971, called practicality disfranchisement. That was the case where the Court said that to pair apart a small part of one county or beat of one county with the whole county was in effect to disfranchise the people in the smaller part of the county or the beat of a county. Now, if that works that way, it works in the case of pairing, and I'm repeating myself, a smaller county with a larger county. It works in pairing or putting into the same district a minority people with a majority people. It works in a lot of ways, and I don't see how the Court can differentiate between the two. Now, I think—may I just read what I have written here on this?

Q. Sure.

A. District "4" created by the Court order of May 18, 1971, adopted by the Legislature in 1973, House Bill 1389 and reordered by the House May 14, 1975, substantially as ordered by the Court in 1971, is not necessarily unique, but it contains the widest variety of representative inequities multi-member, multi-county, whole county, multi-post multi-residency and floterial districts all in one package. I was

born and grew up to age twenty-one in Lee County near Tupelo, I left the State for a period of about one week before age twenty-one. Tupelo is the thirteenth largest city in the State, 1970 census, and an industrial [72] center. Lee with 47.56 per cent, Itawamba with 17.36 per cent and Monroe with 35.8 per cent of House District "4" of the House District "4" population are the three multi-counties of the District. Itawamba is more than the—than just the eastern boundary of Lee County. It relates to Tupelo and Lee County like Pasadena to Los Angeles, or Rankin County to Hinds. Monroe, on the other hand, is midway between Tupelo and Columbus much of the Monroe population has closer ties to Columbus than to Tupelo. Additionally, Monroe has two medium size cities of its own, Amory and Aberdeen, comprises well over a third of the county's population. Other adjoining counties to Lee are much more closely related and dependent upon Tupelo, Lee County, than Monroe. Those adjoining are Chickasaw, Prentiss, Pontotoc and Union. Now let me describe the arrangement of District "4". Post "1" and "2" of House District "4" require candidates to be residents of and elected by Lee County, thus Lee County is two badly malapportioned districts since electors of Itawamba and Monroe are in nowise involved in that election, the Post "1" and "2" representatives have no reason for more responsiveness to the concerns of Monroe County than to the people of Chickasaw, Pontotoc, Prentiss and Union. Post "3" requires residency and election by Monroe County, thus Monroe with a minus 6.33 per cent of two norm districts is grossly under represented and malapportioned as a single member post district. Post "4" [73] requires residency and election by Itawamba County at minus 7.29 per cent below the norm for one House seat, the Post "4" single member district is over represented and thus malapportioned. Finally, Post "5" is a multi-county, single member district with a population of 97.038, five and two-thirds times the size of a norm district. Applying the practicality disfranchisement theory the candidate elected to Post "5" seat will be a resident of Lee County and he is. As a result of the Court's equity arrangement and as a practical matter Lee County is over represented by 15.35 per cent, Itawamba is over represented by 6.33 per cent and Monroe is under represented by 50 per cent. An elector's district is defined as a geographic area having a defined boundary. A post or subdistrict is likewise defined in specific geographic terms with a known boundary, thus, in terms of delineation, a post district or a numbered district is exactly the same, results in the same kind of election. Constitutional size population or single member district, residents, or disadvantaged, or advantaged to the extent that multi-member and post districts are malapportioned. Now, if I can elaborate on that a little bit, what I mean is, if I am a resident of a district that meets the constitutional requirements, that is norm. If I'm in a House district and it has nearly 18,171, I am disadvantaged if in another district they have a population, they have a representative with a [74] population of 16,900.

Q. Itawamba?

A. Itawamba County, or I am advantaged if in Rankin County or any other place or as in Monroe County, the people there are 34,000 strong have only one representative for 34,000.00 population, so this matter of equity works for or against people in a norm district where other districts do not meet the norm. The only way in my view to remedy that is for all districts to be single member. I want to point out one other thing. The practicality disfranchisement was next used by the court, I believe in terms of the combining of Kemper County with Lauderdale County and that is a very unique situation. I have written something on that that I would like to read here now.

Q. Go ahead.

A. "Federal Court reapportionment 1971. The Court enunciated a theory called practicality disfranchisement which was used throughout the reapportionment order 1971. The theory was applied to Kemper County combined with Lauderdale in House District 24 of the Court's reapportionment order. The Court ruled that combining of Kemper with 10,233 population with Lauderdale, 67,087, which has seven times the population of Kemper actually six and a half times, disfranchised the voters of Kemper for the purpose of electing a representative from that county. Since Kemper was also [75] combined with Lauderdale in a Senate district, District "19", First of all, there was no comparing reason for combining Kemper with Lauderdale, in either the House or the Senate district. With a ten per cent norm district population allowed by the Court alternative delineations are very great. The Court stated and I quoted Footnote 6, Page 18 of the order "Kemper is on the Alabama line and there is no other place to put it." I call

attention to that statement to my counsel at the time, George Taylor, and he just merely shoved it off and I decided that that could not possibly be and I want to present if I may, an exhibit here showing that within one hour after I set about to do so I delineated three districts in which Kemper is not combined with Lauderdale and did not disturb in any meaningful way the apportionment made by the Court. Now what disturbes [sic] me about that is—

BY MR. PARKER: Make this an exhibit.

(Whereupon said document was marked as Plaintiff's Exhibit "11" to the testimony of Mr. Kirksey.)

Q. Explain what that exhibit indicates.

A. First of all let me state that, what disturbed me about the Court's order is that it then having explained that there was no other place to put Kemper County it said that a practicality disfranchisement situation existed so that Kemper could not elect either a representative or a senator from that county. Therefore, they are assigned a [76] residency requirement to one of the post, I believe it was Post "4" in the District "24" that Kemper is combined with Lauderdale requiring that only residents of Kemper County could qualify for that post. I will not pass up pointing out that Kemper County is the home county of Senator John Stennis and I can see no other reason for that arrangement because George County is combined with Jackson County and the difference between the population of George and Jackson is considerably greater than that between Kemper and Lauderdale. There are other county combinations that are just as significant. If you can't elect with less than fifty per cent, it doesn't matter one iota whether you have ten per cent of the population or thirty per cent. The practicality disfranchisement in my view is operative in either case.

(Whereupon Exhibit "11" was shown to opposing counsel.)

Q. This is self-explanatory, isn't it?

A. Yes, let me explain that, what I have there on that map on the two sheets—two maps per sheet and at the top of the sheet one is the plan which has Kemper County and Lauderdale County combined in a district. Now that might be—you'll have to read the legend, I think it's up on the top

of the page, because it's such a small map I had to indicate the name of the county by number. I believe on that map Kemper County is number five but then I included all of the [77] adjoining districts to the District "4" and I believe it starts with 20 in Winston County, 23 would be Lowndes, Oktibbeha and Noxubee and I don't recall, 24 would be the Kemper, Lauderdale, 25 I believe I'm not sure about this, I think it's Newton, Jasper, Clarke or the other way around with the other district being Leake and Neshoba. Now, just by simply juggling those county combinations I was able to get three. In fact, there are other arrangements, you could go to perhaps and make out two or three other arrangements. In fact, had I gone on any further I could have delineated more single member districts than the Court had in that area. It's possible to have at least one more single member district. The reason I didn't do it was that it would require renumbering all the remaining districts in the State.

Now, I'll shorten it by coming to the conclusion. In my view whoever drew up that plan for the Court just simply committed a political gerrymander. I can't see any other way to explain how the practicality disfranchisement would work for Kemper County and not for other counties and why the planner or the Court could not find alternative places for Kemper County.

Q. Do you have anything further?

A. Well, I would like to make one or two statements about Hinds County if I may.

Q. About Hinds County?

[78] A. Yes.

BY MR. BRYANT: Let me ask you in all of your alternative plans there for Kemper and Lauderdale you did have Kemper in with two other counties, didn't you?

A. Yes, I think in most cases, yes, with two other counties but the average, I believe, over the State in the Court's plan is somewhere between two and three counties combined. I would like to point to what happened in Hinds County in 1971. In the—I don't remember these actions in terms of dates, but the Supreme Court ordered, if possible, the creation of single member districts for Hinds County and I think there was included in the order if it was found to be feasible and the Court stayed the election in Mississippi for a period of about seven days. There was a hearing and

the Court appointed W. D. Neal to delineate single member districts or find why and report on why it could not be done, and this is important to me because Neal's work robbed Hinds County of single member district in 1971. He created insurmountable obstacles by combining in what he called areas a number of precincts that could not be separated. Now, it's important to point out that the Court had determined that no precinct could be changed. If you were going —the Court delineated single member districts that you must not alter any precincts, so you would have to delineate districts [79] around precincts and I'm talking about precincts are defined variously. One way is an election district, another way is a voting precinct. I prefer to use just precinct. It so happened that whoever delineated the precincts for the City of Jackson with only about five exceptions incorporated them within the bounds of the census tracts of Hinds County, and as we have done in many instances here we have delineated districts in Hinds County on the basis of census tract. Within the census tracts with just one exception you cannot divide precincts and that exception would be in census tract "32" which it out on Lynch Street in the Lynch Street, Highway 80 area there is an enumeration district that runs along the Illinois Central Railroad track from one end of that census tract to the other and you could split the two precincts in census tract "32". That is to say, what we're talking about here is being able to divide—separate precincts from precincts and be able to determine the population of the precinct or precincts.

Q. In 1971?

A. In 1971. Now, remember that at that time we had no block data; therefore, the only means by which you could determine what the population of a—you could not with the one exception I have mentioned, that is census tract "32", you could not have more—you could not have two precincts in a census tract and know the population of each precinct, but [80] you could in all cases without one, two, three, four, five, six exceptions determine the population of groups of precincts. What W. D. Neal did was to combine areas or groups of precincts in such a way that he created large area populations and small area populations in such a manner that it would be impossible to delineate either House or Senate districts in those areas. Now, the background of this is that the Court had proposed at the outset

that the supervisor districts in Hinds County be used as senatorial districts and that each supervisor district would become a multi-member House district from which two representatives would be elected and that two additional representatives would be elected countywide. Now, that means to me that the Court was willing for the special master to divide the plan, W. D. Neal, to divide the plan that was a combination of single and multi-member districts. If the Court proposed to do it why couldn't the special master do it. Thus in combining these precinct areas in such a manner that districts could not be delineated, either House or Senate, W. D. Neal disfranchised the people of Hinds County insofar as it was possible to delineate single member districts. Now, what I am saying is, that with six exceptions every census tract was comprised of one or more precincts that could be the precise population according to the census could be determined, for example, in census tract one, precincts 44 and 45, the population of those two precincts is [81] equal to the population of the census tract, but since the boundary of the precincts inside the tract are not coterminous with the E.D.'s in that census tract there's no way to tell without block statistics the population of either of those precincts. Now, using the correct delineation of areas or blocks of precincts, I delineated eight House—eight single member House districts all within Jackson, the City of Jackson, which means that there would only be—it would only be necessary to have one multi-member House district for the election of the remaining four representatives. I delineated three constitutional size Senate districts in the City of Jackson which means that it would be necessary to have one multi-member Senate district for the remaining portion of the county and Jackson. However, I went further and found that I could, by simply adding ballot boxes and requiring a special poll book require that the population in Supervisor District "1" living in census enumeration District "84" and "89" would cast their ballots in a separate box, a special ballot, and the residents of, I'm sorry, let me ask a question. Did I name the precincts involved there?

Q. You said enumeration District "84" and "89".

A. Okay, let me see if I can make that clear. Enumeration District "84" and "89" are in Supervisor District "1", they are included in Liberty Grove and Cynthia precincts.

If I take those people who live in ED "84", enumeration [82] District "84" and enumeration District "89" and allow them to vote in a special box, I do the same thing for Supervisor District "2" which has to do with Flag Chapel precinct, and in that district I would exclude people, electors not living in ED "87" and ED "143". In Midway precinct and Van Winkle "1" precinct, Supervisor District "4", I would require the voters living in enumeration District "155", "56" and "57" to cast ballots in a special ballot box and in Supervisor District "3", Woodville Heights precinct I would require persons residing in enumeration District "192-C" to use a special ballot box. Now, with those arrangements and these are very clearly defined lines in which the Circuit Clerk could easily determine who lives outside of a certain enumeration district and who lives in a certain enumeration district. If the Circuit Clerk were to make those provisions I could have delineated all five Senate districts well within norm and nine House districts leaving only one multi-member House district for Hinds County, and I want to point that out because the Court in appointing W. D. Neal and I can't explain why—I can't explain why this man made more than 67 per cent errors and he is a former Auditor of Public Accounts, State of Mississippi. I'm certain that he held such a office under the gubernatorial administration of J. P. Coleman.

Q. Now, let me ask you this. Did Mr. Neal's objection to the formulation single member districts in Hinds [83] County and the City of Jackson apply today?

A. If we had to delineate districts on the basis of precincts and the Court insisted upon using Neal's data, it would apply.

Q. In terms of the census material that has since been made available?

A. No, the situation has changed.

Q. How?

A. I simply wanted to put that in.

Q. Okay, I want you to explain how the situation has changed.

A. In 1971 the block statistics were not available.

Q. This is the census count of the population of everybody in Hinds County, City of Jackson per block?

A. Correct, let me explain further, after the 1960 census the Bureau of the Census informed the City of Jackson and

the government of Jackson, that is Board of Supervisors, that the City of Jackson was entitled to become a metropolitan statistical area and in metropolitan statistical areas as defined by the census they enumerate and total up the population of each block.

Q. So what you're saying is, let me ask you this, is it now possible, having these blocks to calculate the exact population of the number of residents living within each voting precinct within the City of Jackson?

[84] A. It is.

Q. Have you finished?

A. I think so.

BY MR. PARKER: Any cross examination?

BY MR. BRYANT: No more questions.

(Whereupon the taking of the deposition was thus concluded.)

[*Deponent's Certificate Omitted*]

[*Court Reporter's Certificate Omitted*]

[Exhibits Omitted]

PLAINTIFF'S EXHIBIT P-32 MAY 7, 1975

MISSISSIPPI SENATE

52 Members

Norm Population Per Senate District: 42,632.92

District Number	Description County and/or Part		Total Population	Norm Deviation
Northeast Region				
1	Tishomingo:	All		
	Itawamba:	All		
	Alcorn:	SD2		
	Prentiss:	SD4-5	41,551	-2.54%
2	Alcorn:	SD1,3-5		
	Lee:	SD1		
	Prentiss:	SD1-3	41,515	-2.62%
3	Benton:	All		
	Tippah:	All		
	Union:	All	42,453	- .42%
4	Marshall:	All		
	Lafayette:	Less: SD1: ED4B,5-7 SD2: ED1B SD5: ED21	42,824	+ .45%
5	Calhoun:	SD2-3		
	Chickasaw:	SD1-4		
	Lafayette:	SD1: ED4B,5-7, SD2: ED1B SD5: ED21		
	Pontotoc:	All	43,653	+2.39%
6	Lee:	Less SD1	42,181	-1.06%
7	Lowndes:	SD1		
	Monroe:	All	43,167	+1.25%
8	Clay:	SD1: ED2B SD2: ED21-22		
	Lowndes:	Remainder	42,733	+ .23%
9	Chickasaw:	SD5: ED12		
	Clay:	Remainder		
	Oktibbeha:	SD1-2,5 SD3, ED1B	42,774	+ .33%
10	Calhoun:	Remainder		
	Chickasaw:	Remainder		
	Choctaw:	Less SD4		
	Montgomery:	All		
	Oktibbeha:	Remainder		
	Webster:	All	43,011	+ .89%

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Delta Region

District Number	Description County and/or Part		Total Population	Norm Deviation
11	DeSoto:	All		
	Tunica:	SD1-2	42,343	- .68%
12	Panola:	SD1-2,4-5 SD3: ED30-31		
	Tate:	All	41,836	-1.87%
13	Coahoma:	SD1-3 SD4: Clarksdale: ED16-18,30-38 SD4: ED39,41		
	Quitman:	All		
	Tunica:	Remainder	43,039	+ .95%
14	Grenada:	All		
	Panola:	Remainder		
	Tallahatchie:	SD1-2 SD3: ED25-26		
	Yalobusha:	All	43,251	+1.45%
15	Leflore:	SD1-2 SD3: Greenwood SD3: ED35-36,39L SD4: ED42		
	Tallahatchie:	Remainder	42,886	+ .59%
16	Bolivar:	SD1,3 SD2: ED24 SD4: ED34-35,52-53,55		
	Coahoma:	Remainder		
	Sunflower:	SD5: ED1-4,7-11	42,257	- .88%
17	Bolivar:	SD2: Remainder SD4: Remainder SD5		
	Sunflower:	SD4 SD5: Remainder	42,415	- .51%
18	Washington:	SD3: Greenville: ED12-18 SD3: ED19-50,53-55	42,610	- .03%
19	Humphreys:	SD1: ED6		
	Leflore:	SD4: ED40-41,43,44T SD5: ED16-49		
	Sunflower:	SD1-3		
	Washington:	SD3: Remainder SD4: Less ED5,10	42,721	+ .21%
20	Attala:	SD1: ED21-22 SD3-4		
	Carroll:	All		
	Holmes:	All		
	Leflore:	SD3: ED37-38,39TN SD4: ED44V SD5: ED45,50	42,620	- .03%

Delta Region cont'd

District Number	Description County and/or Parts		Total Population	Norm Deviation
21	Leake:	SD3		
	Madison:	All		
	Yazoo:	SD1: ED24-25,27-29 SD2,4 SD3: ED16,20	42,390	- .57%
22	Humphreys:	Remainder		
	Sharkey:	SD1: ED7 SD5		
	Washington:	SD1-2,5 SD4: ED5,10		
	Yazoo	SD3: Yazoo City SD3: ED17-18	42,010	-1.46%
23	Issaquena:	All		
	Sharkey:	SD1-3 SD4: Less ED7		
	Warren:	SD1-3 SD4: Less ED35		
	Yazoo:	SD1: ED26 SD3: ED19,21 SD5	42,994	+ .75%

East Central Region

24	Kemper:	All		
	Neshoba:	SD2: ED1-2 SD3: ED25 SD5: ED14		
	Noxubee:	All		
	Winston:	SD1: ED6-7 SD2: ED17-19 SD3: ED2-3 SD5: ED13-14 Louisville	42,660	+ .06%
25	Attala:	Remainder		
	Choctaw:	SD4		
	Leake:	SD1-2 SD5: ED20		
	Neshoba:	SD1: All SD4: ED18-19 SD5: ED15-16		
	Winston:	Remainder	43,043	+ .96%
26	Lauderdale:	Meridian Less ED54,57,62-63,70B PS2 SW State Hwy 19 (& 8th St)	42,362	- .64%

East Central Region cont'd

District Number	Description County and/or Part		Total Population	Norm Deviation
27	Clarke:	All		
	Lauderdale:	Remainder		
	Wayne:	SD3		
		SD4: ED3	42,160	-1.11%
28	Jasper:	All		
	Jones:	SD1: ED38		
		SD3: ED1, 3-4		
	Neshoba:	SD3: ED23-24		
		SD4: ED17,20-22		
	Newton:	All	42,506	- .30%
29	Leake:	SD4		
		SD5: ED16-19,21		
	Rankin:	SD1: ED1A		
	Scott:	All		
	Simpson:	SD1: ED6		
		SD2: ED12		
	Smith:	All	43,037	+ .95%
30	Rankin:	Remainder: Less SD5: ED32	42,602	- .07%

Southwest Region

31-35	See House-Senate Addenda			
36	Adams:	SD4: ED14-16		
		SD5: ED17-18,19B		
	Claiborne:	All		
	Hinds:	SD3: ED198,203		
	Jefferson:	All		
	Warren:	SD4: ED35		
		SD5	42,534	- .23%
37	Copiah:	All		
	Rankin:	SD5: ED32		
	Simpson:	SD1: Less ED6		
		SD2: Less ED12		
		SD3-5	43,187	+1.30%
38	Jeff Davis:	SD2		
	Lawrence:	Less: SD3: ED15		
	Marion:	All		
	Walthall:	SD1: ED12		
		SD2: Less ED10		
		SD3-4	42,751	+ .28%
39	Lawrence:	SD3: ED15		
	Lincoln:	SD1: ED19-20		
		SD2: ED1-2		
		SD3		
		SD4: ED25		

Southwest Region cont'd

District Number	Description County and/or Part		Total Population	Norm Deviation
	Pike:	SD1, 3-4		
		SD2: Less ED27		
		SD5: Less ED33		
	Walthall:	SD1: ED11		
		SD2: ED10		
		SD5	42,309	- .76%
40	Amite:	All		
	Franklin:	All		
	Lincoln:	SD1: ED18,21		
		SD1: Brookhaven		
		SD2: ED3		
		SD4: Less ED25		
		SD5		
	Pike:	SD2: ED27		
		SD5: ED33	42,688	+ .13%
41	Adams:	Remainder		
	Wilkinson:	All	42,044	-1.38%

Coast Region

42	George:	SD1,4		
	Greene:	All		
	Jones:	SD4: ED56,59		
	Perry:	All		
	Stone:	SD5: ED1		
	Wayne:	Remainder	42,240	- .92%
43	Jones:	SD1: Remainder		
		SD2: Less ED44-47		
		SD3: Remainder		
		SD4: Remainder	42,269	-1.09%
44	Covington:	All		
	Forrest:	SD2		
	Jeff Davis:	Remainder		
	Jones:	SD2: ED44-47		
		SD5	43,184	+1.29%
45	Forrest:	SD1: Less ED28		
		SD3: Less ED40-42,45		
	Lamar:	SD4: ED7B	41,889	-1.74%
46	Forrest:	Remainder		
	Lamar:	Remainder		
	Pearl River:	SD1-3		
		SD4: ED30-32,35		
		SD5: ED14-18		
	Stone:	Wiggins: ED3,6,9		
		SD1: ED10		
		SD2		
		SD3: ED7-8		
		SD4: ED5	43,433	+1.68%

(continued)

District Number	Description County and/or Part		Total Population	Norm Deviation
[illegible]	Hancock:	All CT25: ED62		
	Harrison:	CT29-30,35 CT31: ED61A,69, 79-81,85		
	Pearl River:	Remainder	42,284	-.62%
[illegible]	George: Harrison:	Remainder CT32: Less ED65 CT33: ED67,101,102,107A CT34 CT36: ED39		
	Jackson:	SD1 SD2: Escatauga: ED30-31AB SD2: Moss Point: ED32-33 SD2: ED46-47 SD3: ED73 SD4: ED17,18B SD5		
	Stone	Remainder	42,934	+.71%
[illegible]	Jackson:	Pascagoula: SD2: ED45 SD3: Less ED73 Moss Point: SD2:ED34-44	42,707	+.17%
[illegible]	Harrison:	CT1-5,7 CT6: ED150-151 CT8: Less ED3 CT33: ED33,102,105,107B		
	Jackson:	CT9501-9503 SD4: ED8, 18A,19	42,847	+.50%
1 [illegible]	Harrison:	CT6: Less ED150-151 CT8: ED3 CT9-13,15,17 CT14: ED32,116-118 ED119:B518 E. of Hill Pl. Ext.	42,887	+.60%
2 [illegible]	Harrison:	CT14: ED54,119 Less B518 Ext. Hill St. Ext. CT14.99 CT16,18-24,26-28 CT25: Less ED62 CT31: Remainder CT32: ED95	43,299	+1.56%

MISSISSIPPI SENATE

District Number	Hinds County Description by CT EDs and Blocks (B)		Total Population	Norm Deviation
31	Jackson Part: 1-4 5: 12: 13-15 16: 28: 29: County Part: 101: 102:	ED13-14: East of Hanging Moss ED18 ED37: B120 ED50,53-54,166-167 ED51: Less B321-322 ED52: B205,210 ED55: East of N. West ED168: North of Pearl ED45,163,164A ED78-80	42,897	+.52%
32 [illegible]	Jackson Part: 5: 6-10 11: 12: County Part: 102: 103:	Remainder ED31L,33-34 Remainder Remainder ED87 ED88: East of Magnolia Rd ED143	42,732	+.24%
33	Jackson Part: 11: 16: 17-20 21: 24: 25-27 28: 29: 30: 31: 32: 34: County Part: 111:	Remainder Remainder ED71 ED72: B113 ED112: Less B209,220 ED124: Less B106-109.206 ED125 ED126: B208-209 Remainder Remainder ED103-104,170A ED170B: B301-307 ED130: B101-108 ED131: Less B211,216 ED134AB: B101-102 ED173A: B103 • ED187: *Part B901,B902-908*	43,225	+1.39%

District Number	Hinds County Description by CT EDs and Blocks (B)	Total Population	Norm Deviation
34	Jackson Part:		
	21: Remainder		
	22-23		
	24: Remainder		
	30: Remainder		
	32: Remainder		
	33		
	34: Remainder		
	35-38		
	County Part:		
	109: ED155		
	ED156: Less B211-212		
	ED158: B903-904		
	110: ED159: B101-102, 109-112		
	ED192C		
	111: *ED187: *Part B901, B909-911		
	ED188: Less B917		
	ED189: Less B916	42,028	-1.42%
35	County (all):		
	103: *Remainder		
	104-108		
	109: Remainder		
	110: Remainder		
	111: *Remainder		
	112		
	113: Less ED198,203	42,040	-1.39%
36	Hinds County Part Only:		
	113: ED198,203	2,051	

[illegible]

MISSISSIPPI HOUSE OF REPRESENTATIVES

122 Members

Norm Population Per House District: 18171.41

District Number	Description County and/or Part	Total Population	Norm Deviation
1	Tishomingo All less SD5: ED22 Prentiss: SD4: ED22-23 SD5: All	17,989	-1.00%
2	Alcorn: SD1: less ED15 SD2: All SD4: ED20-23	18,189	+ .02%
3	Alcorn: SD1: ED15 SD3: All SD4: ED19, 24-27 Prentiss: SD1-2: All	18,541	+2.03%
4	Alcorn: SD5: All Tippah: All	17,762	+2.25%
5	Marshall: SD1: Less ED20 SD2: All Benton: SD1-4: All	18,269	+ .48%
6	DeSoto: SD1: ED2, 4-7 Marshall: SD3-4: All Tate: SD4: ED21 SD5: All	18,231	+ .33%
7	Lafayette: SD3: ED9-11 SD4: ED15-17 Panola: SD1: ED 2 SD3: ED 24-25,27 SD4: All SD5: ED10-14, 19-20	18,709	+2.96%
8	Lafayette: Oxford: All SD1: ED6-7 SD2: ED 3 SD5: ED21-22	17,722	-2.47%
9	Benton: SD5: All Lafayette: SD2: Ed2 Marshall: SD1: ED20 SD5: All Union: SD1-2: All SD3: EDS-13, 15-16	18,430	+1.42%
10	Lee: SD1-2: All Prentiss: Remainder Union: Remainder	18,417	+1.35%

District Number	Description County and/or Part	Total Population	Norm Deviation
11	Itawamba: All Tishomingo: SD5: ED22	17,895	-1.52%
12	Lee: SD3: ED10,12,26-29 SD4: ED30-32,36-38 SD5: Less ED40-41	18,279	+ .59%
13	Lee: Tupelo: ED11,13-25,33-35	17,914	-1.38%
14	Lafayette: SD1: ED5 Pontotoc: All	17,942	-1.26%
15	Yalobusha: All Calhoun: SD2-3: All	17,789	-2.10%
16	Grenada: All: Less SD5	18,161	- .06%
17	Calhoun: SD4-5: All Webster: SD1-4: All SD5: ED3	18,101	- .47%
18	Chickasaw: All Clay: SD5: ED14 Webster: SD5: ED1-2	18,398	+1.35%
19	Lee: SD5: ED40-41 Monroe: SD1: All SD5: Less ED17-18	17,910	-1.44%
20	Monroe: SD2-4: All SD5: ED17-18	18,090	- .45%
21	Clay: All: Less SD5: ED14	17,942	-1.26%
22	Lowndes: SD1: All SD2: ED14,17-19,27-31 SD3: ED36-37	18,312	+ .77%
23	Lowndes: Columbus: SD2: ED8-13,15-16,20-26, 32	18,111	- .33%
24	Lowndes: SD3: Remainder SD4-5: All		
	Oktibbeha: SD2: All SD5: ED25-26	17,974	-1.09%
25	Oktibbeha: SD1: Starkville SD1: ED13,16 SD3: ED17-19	17,812	-1.98%

District Number	Description County and/or Part		Total Population	Norm Deviation
26	Attala:	SD2: ED1-2		
	Choctaw:	All		
	Oktibbeha:	Remainder		
	Winston:	SD1: ED2,6		
		SD4: ED9	17,917	-1.40%
27	Carroll:	SD1: All		
		SD4: ED4-5,7		
		SD5: All		
	Montgomery:	All	18,093	- .43%
Delta Region				
28	DeSoto:	SD1: ED1A-C,3		
		SD2: All		
		SD3: ED17	18,538	+2.02%
29	DeSoto:	SD3: Less ED17		
		SD4-5: All		
	Tunica:	SD1-2: All	17,978	-1.06%
30	Panola:	SD1: ED1,3-4		
		SD2: ED7		
	Tate:	SD1-3		
		SD4: Less ED21	18,230	+ .32%
31	Coahoma:	SD1		
	Panola	SD1: ED5		
		SD2: ED6, 8-9		
		SD3: ED31		
		SD5: ED15-18		
	Quitman:	SD1		
	Tunica:	SD3-5	18,332	+ .88%
32	Coahoma:	SD3: ED5-6		
	Panola:	SD3: ED26,28-30		
	Quitman:	SD2-5		
	Tallahatchie:			
		SD1	17,870	-1.66%
33	Coahoma:	SD2: All		
		SD3: ED7-8		
		SD4: C'dale: ED22-24		
		SD4: ED39-46		
		SD5	18,434	+1.45%
34	Coahoma:	SD4: C'dale:		
		ED16-21,25-38	18,286	+ .63%
35	Bolivar:	SD1,3: All		
		SD2: ED18-20,24		
		SD4: ED34-35B,52-53	18,390	+1.20%

Delta Region (cont'd)

District Number	Description County and/or Part		Total Population	Norm Deviation
36	Bolivar:	Cleveland (SD4)		
		SD4: ED 33, 54-57	18,293	+ .67%
37	Sunflower:	SD2: ED27,28		
		SD3: ED40		
		SD4: Less ED22		
		SD5: All	18,131	- .22%
38	Tallahatchie:			
		All Less SD1	18,142	- .16%
39	Carroll:	SD2: All		
	Grenada:	SD5: All		
	Leflore:	SD1-2: All		
		SD3: Greenwood:		
		ED11 (N.Part)		
		ED12-16		
		SD3: ED35-37,38I		
		SD4: ED42,44U	17,907	-1.46%
40	Leflore:	Greenwood: Remaindor		
		SD3: ED38K, 39	18,038	- .73%
41	Carroll:	SD3: All		
		SD4: ED6		
	Holmes:	SD1: ED 16-17		
		SD5: All		
	Leflore:	SD3: ED38J		
		SD4: ED1C-41,43,44V		
		SD5: All	17,920	-1.38%
42	Sunflower:	Remainder:		
		Less SD4: ED22	18,143	- .16%
43	Bolivar:	Remainder		
	Sunflower:	SD4: ED22		
	Washington:	SD3: ED51,53-55		
		SD4: ED6-7	17,676	-2.73%
44	Washington:	SD3: ED41-42,48-49,52,		
		56-62,9900		
		SD4: ED1-4,8-11	17,954	-1.20%
45	Washington:	SD3: Greenville:		
		ED12-19,21,39-40,		
		43-47	18,321	+ .82%
46	Washington:	SD3: Greenville:		
		ED20,22-38		
		SD3: ED50	18,025	- .81%
47	Issaquena:	SD5: All		
	Sharkey:	SD3: All		
		SD4: ED4-6		
		SD5: ED2-3		

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Delta Region (cont'd)

District Number	Description County and/or Part		Total Population	Pop. Deviation
47	Washington:	SD1-2: All SD4: ED5 SD5: Less ED70	18,101	- .39%
48	Holmes: Humphreys: Sharkey: Washington:	SD4: All All SD4: ED7 SD5: ED1 SD5: ED70	17,693	-2.63%
49	Holmes: Yazoo:	Remainder SD4: ED2-4	17,868	-1.67%
50	Yazoo:	SD1: ED27 SD3: All SD4: ED1, 5	18,300	- .71%
51	Issaquena: Sharkey: Warren: Yazoo:	SD1-4: All SD1-2: All SD1: All SD2: ED13-14 SD1: ED24,26 SD5: All	18,090	- .45%

East Central Region

52	Kemper: Noxubee:	SD1: All SD5: ED6,8 All	18,096	- .41%
53	Neshoba: Winston: Louisville:	SD5: All SD1-5 SD1: ED 7 SD2: ED 17-19 SD3: ED 3 SD4: ED 10-11 SD5: ED 13-15	18,184	+ .07%
54	Attala:	SD1,3,5: All SD2: ED3 SD4: Less ED10	18,115	- .31%
55	Attala: Leake: Madison:	SD4: ED10 All SD5: ED 1	18,370	+1.09%
56	Neshoba:	Less SD5	18,674	+2.77%
57	Kemper: Lauderdale:	SD2-4 SD5: ED 7 SD1: ED 23B, 32-37 SD2: ED 11-13,19 SD3: ED 46-49	18,219	+ .26%

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East Central Region (cont'd)

District Number	Description County and/or Part		Total Population	Pop. Deviation
58	Lauderdale:	Meridian: SD1: ED20-21,23A,24-30 SD2: ED1, 2(N) SD3: ED39-41	17,887	-1.5%
59	Lauderdale:	Meridian: SD1: ED22,31 SD2: ED2(S),3-19 SD3: ED43-45 SD4: ED58(N),59,60(N),61 SD5: ED70A(N),71(N), 73-79	18,470	+1.64%
60	Lauderdale:	Meridian: SD3: ED38,42 SD4: ED52-57,58(S),60(S), 62-63 SD5: ED70A(E),70B, 71(S),72 Remainder: SD2: ED14-18 SD3: ED50-51 SD4: ED64-67,69 SD5: ED80-84	18,321	+ .82%
61	Newton:	Less SD5: ED22	18,175	+ .02%
62	Scott:	SD1: Less ED19 SD2: Less ED11 SD3: ED26-28 SD4-5	18,102	- .38%
63	Madison: Rankin:	SD1: Canton: ED6-7, 11-12,14-16 SD1: ED18 SD3: Less ED29 SD4: All SD3	17,889	-1.55%
64	Rankin:	SD2: ED3-6,7B,8-9,11 ED14(E) ED15-17, 19-22AB	17,882	-1.59%
65	Rankin:	SD1 SD2: ED7A,10,12-13,14(W) ED18,23-25	17,715	-2.51%
66	Simpson:	Less SD2: ED12-13	18,278	+ .59%
67	Rankin: Scott: Smith:	SD4-5 SD1: ED19 SD2: ED11 SD3: ED 29-30 SD1, 4-5 SD2: ED 18	17,776	-2.18%

West Central Region (cont'd)

District Number	Description County and/or Part		Total Population	Norm Deviation
68	Newton:	SD5: ED 22		
	Jasper:	All		
	Jones:	SD3: ED 3	18,013	- .87%
69	Clarke:	All		
	Lauderdale:	SD1: ED 60		
	Wayne:	SD2: All	18,060	- .61%
		SD4: ED3		

Southwest Region

70	Madison	SD1: Canton: ED 8-10,13		
		SD2: ED 17,19-20		
		SD2		
		SD3: ED 29		
		SD5: ED 2-3		
	Yazoo:	Remainder	18,178	.04%

District Number	Hinds County Description by CT	EDs and Blocks (B)	Total Population	Norm Deviation
71	Jackson Part:			
	1			
	2:	ED4-5		
	3			
	4:	P-ED9: North of Northside Dr.		
		ED10:		
	County Part:			
	101:	Less ED75BL,75L		
	102:	ED78	18,117	- .30%
72	Jackson Part:			
	2:	ED4L,6L		
	4:	Remainder		
	12:	ED37: B120		
	13-15			
	16:	ED50L		
		ED166: Less B111-112		
		ED167: Less B113-114,121-122		
	29:	ED45		
		ED163: North of High St. & Ext.		
		ED164A: B101-108		
	County Part:			
	101:	ED75AL,75L	17,687	-2.67%
73	Jackson Part:			
	5			
	6:	ED19: North of Collier		
		ED21: North of Ave. D		
	9:	ED26: B101-109		
	County Part:			
	102:	Less ED78		
	103:	ED87: B101-105		
		*ED88: East of Magnolia Rd	18,229	+ .32%

District Number	Hinds County Description by CT	EDs and Blocks (B)	Total Population	Norm Deviation
74	Jackson (all):			
	6:	Remainder:		
	8:	ED23		
		ED24: West of Airport Boundary		
	9:	Remainder		
	10:	ED28		
	11:	ED31L,34		
		ED33: Less B206-207		
	12:	Remainder	18,207	+ .20%
75	Jackson (all):			
	10:	Remainder		
	11:	Remainder		
	16:	ED50L,51		
		ED52: Less B204-205,210-212		
	17:			
	18:	ED56: B101-105		
	19:	Less ED66: B312-317		
	20:	Less ED70:B204-205,207	17,884	-1.58%
76	Jackson Part:			
	16:	Remainder		
	18:	Remainder		
	19:	Remainder		
	20:	Remainder		
	25:	ED68,108-109		
		ED111: B116-118,201-203		
	26:	ED105,171		
		ED107: Less B206		
	27-28			
	29:	Remainder		
	30:	ED103-104,170A		
		ED170B: B301-307, Part B308		
	31:	ED172: B119-122,218-225		
	County Part:			
	111: *	ED187: B901: North of Hardy Creek		
		B902-908	17,908	-1.45%
77	Jackson (all):			
	21:	ED71		
		ED72: B113-116		
		ED112-113		
		ED115: B301-302		
	24:	ED124-126		
		ED127: B215		
	25:	ED110		
		ED111: Remainder		
	26:	ED106		
		ED107: B206		
	31:	Remainder		
	32:	ED130: Less B217-222		
		ED131: Less B216		
	34:	ED134AB: B101-102,122-126		
		ED173A		
		ED174: B113-114	17,774	-2.13%

Hinds County

District Number	Description by CT EDs and Blocks (B)	Total Population	Norm Deviation
78	Jackson Part:		
	7:		
	8: Remainder		
	21: Remainder		
	22-23		
	24: Remainder		
	32: Remainder		
	33: ED128		
	34: ED134: B201-205		
	County Part:		
	103: ED87: Remainder		
	ED143		
	109: ED155		
	ED156: Less B211-212		
	ED158: B903-904	17,742	-2.36%
79	Jackson (All):		
	30: Remainder		
	33: Remainder		
	34: Remainder		
	35-36		
	37: ED184: B101-103,214		
	38: ED182: B101-103	17,877	-1.62%
80	Jackson Part:		
	37: Remainder		
	38: Remainder		
	County Part:		
	107: ED194,199L		
	111: *Remainder		
	112-113	17,723	-2.47%
81	County (all):		
	107: Remainder		
	108		
	109: Remainder		
	110	17,967	-1.12%
82	County (All):		
	103: *Remainder		
	104-106	17,858	-1.72%

* See explanation last page

Southwest Region (cont'd)

District Number	Description County and/or Part	Total Population	Norm Deviation
83	Warren: Vicksburg:		
	SD2: Remainder		
	SD3: All		
	SD4: Less ED35	18,249	+ .43%
84	Claiborne: SD2-4: All		
	SD5: ED12		
	Warren: SD4: ED35		
	SD5: All	18,483	+1.71%
85	Copiah: SD1: ED15-19,21-23		
	SD4: All		
	SD5: Less ED1, 7	17,665	-2.79%
86	Copiah: Remainder		
	Lawrence: SD1: ED6-8		
	SD2: All		
	Lincoln: SD1: ED18		
	SD2		
	SD5	18,177	+ .03%
87	Adams: SD4: ED14		
	SD5: ED17-18,19B		
	Claiborne: SD1		
	SD5: ED13		
	Jefferson: All	18,513	+1.88%
88	Adams: Natchez: SD1: ED26		
	SD4: ED1-13		
	SD4: ED15-16		
	SD5: ED19A,20	18,370	+1.09%
89	Adams: SD1: Natchez: ED27-38		
	SD1: ED39-41		
	Wilkinson: SD1: Less ED11		
	SD2,4	18,337	+ .91%
90	Adams: SD2: ED24-25		
	SD3: ED22-23		
	SD5: ED21		
	Amite: SD2-3		
	Franklin: SD1-2		
	SD3: ED5		
	Wilkinson: SD1: ED11		
	SD3-5	18,314	+ .78%
91	Amite: SD1: ED4-5		
	Franklin: SD3: ED3-4		
	SD4-5		
	Lincoln: SD4: ED24		
	Pike: SD2: ED22-24,26-27		
	SD5: ED31,33	18,481	+1.76%

Southwest Region (cont.)

District Number	Description County and/or Part		Total Population	Norm Deviation
92	Lincoln:	SD1: B'haven: ED7-17 SD1: ED19-21 SD3 SD4: ED22-23,25	18,676	+2.78%
93	Pike:	SD2: ED18-20 SD4: All	18,541	+2.03%
94	Lawrence:	SD1: ED9 SD3		
	Pike:	SD1 SD2: ED21,25,28 SD3 SD5: ED32		
	Walthall:	SD1: ED11 SD2: Less ED8-9 SD4-5	18,229	+ .32%
95	Marion:	SD1: ED1-4 SD2: ED8-10 SD3-4		
	Walthall:	SD1: ED12 SD2: ED8-9 SD3	17,883	-1.59%

Coast Region

96	Jones:	SD3: ED6 SD4: ED56-57,59		
	Wayne:	SD1: Less ED12 SD2 SD4: ED4-5 SD5	17,961	-1.16%
97	Jones:	SD1: ED9,15,17-19, 23-24,29-33AB,38 SD3: ED1-2,4-5,7-8	17,873	-1.64%
98	Jones:	SD1: ED10-14,16,20-22, 25-28,34-35,39-40 SD2: Less ED46-48	17,790	-2.10%
99	Covington:	SD1-2		
	Jones:	SD1: ED36-37AB,41 SD2: ED47-48 SD4: ED53-55,58 SD5	18,261	+ .43%
100	Covington:	SD3-5		
	Jones:	SD2: ED46		
	Simpson:	SD2: ED12-13		
	Smith:	SD2: ED17-19 SD3	18,112	- .33%

Region (cont'd)

District Number	Description County and/or Part		Total Population	Norm Deviation
1	Jeff Davis:	All		
	Lawrence:	Remainder		
	Marion:	SD2: ED9,11	18,253	+ .45%
2	Forrest:	SD2: ED8		
	Lamar:	SD1: ED11 SD3-5: All		
	Marion:	Remainder	18,334	+ .89%
3	Forrest: Hattiesburg:	SD1: ED9-15AB(N),16-20,24 SD2: ED7B	18,542	+2.04%
4	Forrest: Hattiesburg:	SD1: ED15B(S),21-23,25-27 SD3: ED30-36AB(W),37-38 SD1: ED28(S)	18,291	+ .60%
5	Forrest:	SD1: ED28(N) SD2: Less ED7B,8 SD3: Hattiesburg; ED29,36B(E) SD3: ED39-44,45 SD4	18,571	+2.20%
6	Green:	All		
	Perry:	All		
	Wayne:	SD1: ED12	17,910	-1.44%
7	George:	All		
	Jackson:	SD1: ED2		
	Stone:	SD1: ED9 SD3: ED6 SD4: ED3-5 SD5: ED1-2	18,230	- .32%
8	Forrest:	SD5: All		
	Lamar:	SD1: ED8-10 SD2: All		
	Stone:	SD1: ED10 SD2: All SD3: ED7-8		
	Pearl River:	SD1,2: All SD3: ED5 SD5: ED15	18,587	+2.29%
9	Pearl River:	SD3: ED3-4 SD4: Less ED35 SD5: Less ED14-15	18,485	+1.73%
0	Pearl River:	SD4: ED35 SD5: ED14		
	Hancock:	All Less SD3: ED2	18,421	+1.37%
1	Hancock:	SD3: ED2		
	Harrison:	CT25: ED62 CT27: Less ED64,90 CT29-31,35: All	18,574	+2.22%

District Number	Description County and/or Part		Total Population	Norm Deviation
12	Harrison:	CT15: ED30AB CT16: ED39, 124 CT18: Less ED100-101 CT24: Less ED40 CT32: Less ED85 CT33: ED57,161,167A CT34: All	18,699	+2.20%
13	Harrison:	CT22-23,26,28: All CT24: ED40 CT25: Less ED62 CT27: ED64,90	18,685	+2.12%
14	Harrison:	CT14.99,19-21: All CT14: ED54,118-119 CT16: Less ED39,124 CT17: ED30,114 CT18: ED100-101	18,566	+2.17%
15	Harrison:	SD4: ED61B SD5: ED36B CT12-13: All CT14: ED32,116-117 CT15: Less ED38AB CT17: ED30,114	18,159	- .07%
16	Harrison:	CT8: Less ED148-149 CT9-11: All	18,709	+2.95%
17	Harrison:	CT1: Less ED130,169-170 CT2,5-6: All CT3: Less ED134, 168 CT4: Less ED140 CT7: ED146	18,378	+1.14%
18	Harrison: Jackson:	CT1: ED130,169-170 CT3: ED134,168 CT4: ED140 CT7: Less ED146 CT8: ED148-149 CT33: ED33,162-165, P167A,167B CT9501 CT9502: ED13F	18,642	+2.59%
19	Jackson:	CT9502: Less ED13F CT9503: All SD3: Pascagoula: ED45-55,65,9900 SD4: ED8,17-19 SD4: All	18,635	+2.55%
20	Jackson:	SD1: ED1,3-4 SD2: ED31AB,46-47 SD2: Moss Point: ED32-34, 36-37,38B,39 SD3: ED73	18,432	+1.43%

BEST COPY AVAILABLE

• Attention is called to "block" 308 in CT30, ED170B. The entire series of blocks bearing the number 308 appears to be right-of-way property of the highway system and is unpopulated. Except for the eastmost triangular portion between the south lane of I-20 and the west lane of I-55, the entire block series of "block 308" was apportioned to House District 79 and Senate District 34.

• ED88, northmost part of CT103, runs from H'way 49 (northwest of the City of Jackson) to northwest of the City of Clinton. The ED has a total population of 228 (1970 Census). Magnolia Road runs generally north-south through ED88 near the east-west center. The 228 population was arbitrarily apportioned as follows: 200 to House District 78 (east of Magnolia Rd) and 28 to House District 82 (west of Magnolia Rd.) The apportionment was based purely on probability and the land areas involved. If the entire population of ED88 were apportioned to one district or the other, neither district deviation from the norm population would be affected by as much as two tenths of one percent.

• "Block" 901, ED187, CT111 is a narrow stretch of right-of-way land southeast of the City of Jackson between I-55 and H'way 51 from McDowell Road south to Elton Road (about 3 miles long). One short section of the "block" runs between Kingswood Avenue and H'way 51 just south of McDowell Road. Because it is believed that the entire population of 28 is in the McDowell-Kingswood area, it was apportioned to House District 76 and Senate District 33 (common boundary). Had the entire population of block 901 been apportioned to adjoining House Districts 79 or 80 and thus to Senate District 34, no district norm deviation would be changed by as much as .03%.

Coast Region (cont'd)

District Number	*Description County and/or Part*			*Total Population*	*Norm Deviation*
121	Jackson:	SD2:	Pascagoula: ED45		
		SD3:	Pascagoula: ED48-53		
		SD2:	Moss Point: ED35AB, 38A, 40-44	18,651	+2.64%
122	Jackson:	SD3:	Pascagoula: ED56-64, 66-72	18,305	+ .74%

* Attention is called to "block" 308, ED 170B, CT30. The entire series of blocks bearing the number 308 appear to be right-of-way property of the highway system and is uninhabited. Except for the eastmost triangular portion between the south lane of I-20 and the west lane of I-55, the entire series of "blocks 308" were apportioned to House District 79 and Senate District 34.

* ED88, the northmost part of CT103, runs from H'way 49 (northwest of the City of Jackson) to northwest of the City of Clinton. The ED has a total population of 228 (1970 Census). Magnolia Road runs generally north-south through ED88 near the east-west center. The 228 population was arbitrarily apportioned as follows: 200 to House District 78 (east of Magnolia Rd) and 28 to House District 82 (west of Magnolia Rd.) The apportionment was based purely on probability and the land areas involved. If the entire population of ED88 were apportioned to one district or the other, neither district deviation from the norm population would be affected by as much as two tenths of one percent.

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McDowell Road. Because it is believed that the entire population of 28 is in the McDowell-Kingswood area, it was apportioned to House District 76 and Senate District 33 (common boundary). Had the entire population of block 901 been apportioned to adjoining House Districts 79 or 80 and thus to Senate District 34, no district norm deviation would be changed by as much as .03%.

[Map Omitted]

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Supreme Court, U. S.
FILED
FEB 9 1977
MICHAEL RODAK, JR., CLERK

APPENDIX
VOLUME II

IN THE
Supreme Court of the United States
OCTOBER TERM, 1976

Nos. 76-777, 76-933, 76-934, 76-935

PEGGY J. CONNOR, ET AL.,
Appellants
—*v.*—
CLIFF FINCH, GOVERNOR OF THE STATE OF MISSISSIPPI, ET AL.

CLIFF FINCH, GOVERNOR OF THE STATE OF MISSISSIPPI, ET AL.,
Appellants
—*v.*—
PEGGY J. CONNOR, ET AL. AND UNITED STATES OF AMERICA

UNITED STATES OF AMERICA,
Appellant
—*v.*—
CLIFF FINCH, GOVERNOR OF THE STATE OF MISSISSIPPI, ET AL.

PEGGY J. CONNOR, ET AL.,
Appellants
—*v.*—
CLIFF FINCH, GOVERNOR OF THE STATE OF MISSISSIPPI, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

DOCKETED DECEMBER 8, 1976, AND JANUARY 5, 1977
PROBABLE JURISDICTION NOTED DECEMBER 8, 1976 AND JANUARY 17, 1977.

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Supreme Court of the United States

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PEGGY J. CONNOR, ET AL.,

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—*v.*—

CLIFF FINCH, GOVERNOR OF THE STATE OF MISSISSIPPI, ET AL.

CLIFF FINCH, GOVERNOR OF THE STATE OF MISSISSIPPI, ET AL.,

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—*v.*—

PEGGY J. CONNOR, ET AL. AND UNITED STATES OF AMERICA

UNITED STATES OF AMERICA,

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—*v.*—

CLIFF FINCH, GOVERNOR OF THE STATE OF MISSISSIPPI, ET AL.

PEGGY J. CONNOR, ET AL.,

Appellants

—*v.*—

CLIFF FINCH, GOVERNOR OF THE STATE OF MISSISSIPPI, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

TABLE OF CONTENTS

	Page
Docket Entries	I-1
Complaint (October 19, 1965)	I-37
Plaintiffs' Exhibit 19 (May 17, 1971) (excerpt)	I-47

Page

Transcript of Proceedings (February 7, 1975) (excerpts) I-51

Judgment (April 11, 1975) I-52

Amended Complaint for Injunctive and Other Equitable Relief (April 15, 1975) (exhibits omitted) I-54

Transcript of Proceedings (May 7, 1975) (excerpts) I-70

Plaintiffs' Exhibits (May 7, 1975) I-71

P-6 Deposition of Harold E. Sweeney, Jr. (exhibits omitted) I-71

P-7 Deposition of Dr. James W. Loewen (exhibits omitted) I-117

P-8 Deposition of Dr. Gordon G. Henderson (exhibits omitted) I-155

P-9 Interrogatories of Honorable J. Stanley Pottinger (exhibits omitted) I-200

P-10 Deposition of Rims Barber (exhibits omitted) I-221

P-17 Transcript of February 7, 1975 Testimony of Dr. David Valinsky (exhibits omitted) I-281

P-19 Valinsky Plan for Mississippi House of Representatives I-325

P-20 Valinsky Plan for Mississippi State Senate I-346

P-25 Deposition of Henry J. Kirksey (exhibits omitted) I-360

P-32 Kirksey Plan for Mississippi Senate (map omitted) I-410

P-33 Kirksey Plan for Mississippi House of Representatives (map omitted) I-419

Transcript of Proceedings (May 7, 1975)

Witnesses:

Dr. Gordon G. Henderson (exhibits omitted) II-1

Mr. Rims Barber (exhibits omitted) II-81

Henry J. Kirksey (exhibits omitted) II-114

Order Allowing United States to Intervene as Party-Plaintiff (June 11, 1975) II-128

Complaint in Intervention of United States (June 11, 1975) .. II-129

Analysis of House Bill 1290 and Senate Bill 2976 by United States (June 20, 1975) II-135

Transcript of Proceedings (June 20, 1975) (excerpts) II-177

Order Pursuant to Remand by the Supreme Court of the United States (June 25, 1975) II-178

Page

Order Establishing Certain Temporary Districts for the Election of Senators and Representatives in the Mississippi Legislature for the Year 1975 Only (July 8, 1975) II-183

Order Establishing Certain Temporary Districts for the Election of Senators and Representatives in the Mississippi Legislature for the Year 1975 Only (July 11, 1975) II-207

Plaintiffs' Motion to Alter or Amend Judgment (July 21, 1975) (exhibits omitted) II-239

Motion of United States for Amendment of Judgment (July 24, 1975) II-252

Order on Motions Filed by Plaintiffs and Plaintiff-Intervenor to Alter or Amend (August 1, 1975) II-254

Order Regarding Use of U. S. Census Bureau Population Statistics (August 1, 1975) II-256

Alternative Plans Submitted by the United States Pursuant to Order of July 11, 1975 (October 31, 1975) (map exhibits omitted) III-1

Request for Hearing Date by United States (January 26, 1976) III-78

Order Deferring Further Hearing and Decision (January 29, 1976) III-79

Preliminary Observations of Judge Coleman (June 15, 1976) .. III-81

Transcript of Proceedings (June 15, 1976) (excerpts) III-89

Plaintiffs' Motion for a Prompt and Immediate Decision on a Final Court-Ordered Legislative Reapportionment Plan and Special Elections (August 2, 1976) III-91

Order Regarding Reapportionment of Mississippi State Senate (August 24, 1976) III-94

Order Regarding Reapportionment of Mississippi State House of Representatives (September 8, 1976) III-117

Plaintiffs' Motion for Special Election Relief (September 8, 1976) III-139

Proposal by United States for Special Elections (September 16, 1976) III-142

Plaintiffs' Motion for Special Elections (House Plan) (September 16, 1976) III-146

Plaintiffs' Motion to Alter and Amend Judgment and Plaintiffs' Objections to 1976 Court-Ordered Legislative Reapportionment Plan (September 20, 1976) (exhibits omitted) III-160

Page

Proposal by United States for Special Elections (September 28, 1976) III-169

Letter dated September 28, 1976 from William D. Neal to Honorable J. P. Coleman, Judge III-174

Memorandum from Special Master re House of Representatives (October 7, 1976) III-177

Plaintiffs' Supplement to Motion to Alter or Amend Judgment (October 8, 1976) III-182

Letter dated October 19, 1976 from Frank R. Parker to Honorable J. P. Coleman, et al. III-197

Objections of the United States to Plans for the Redistricting of the Mississippi Senate and House of Representatives Contained in the Court Orders of August 24 and September 8, 1976 (October 22, 1976) III-206

Order Amending the Reapportionment of the House of Representatives (November 12, 1976) III-220

Final Judgment (November 18, 1976) III-232

Plaintiffs' Notice of Appeal (November 18, 1976) III-249

Plaintiffs' Motion to Alter or Amend Judgment (November 29, 1976) III-250

Order by the U. S. Supreme Court Noting Probable Jurisdiction (December 8, 1976) III-259

Letter dated December 17, 1976, from Honorable James P. Coleman to the Clerk, U. S. District Court, attaching Special Master's Report dated December 8, 1976 ..... III-260

Order Amending Previous Judgment (December 21, 1976) III-279

Plaintiffs' Notice of Appeal (December 27, 1976) III-283

United States' Notice of Appeal (December 28, 1976) III-284

Orders noting probable jurisdiction III-285

TRANSCRIPT OF PROCEEDINGS

United States District Court
Southern District of Mississippi
Jackson Division

May 7, 1975

DR. GORDON G. HENDERSON

* * * *

[73] BY MR. PARKER: The plaintiffs call Dr. Gordon G. Henderson.

GORDON G. HENDERSON, called as a witness for and on behalf of the Plaintiffs, was sworn and testified as follows:

DIRECT EXAMINATION

BY MR. PARKER:

Q. State your name and address, please, for the record, Dr. Henderson.

A. I am Gordon G. Henderson, 1536 Winchester, Jackson, Mississippi.

[74] BY JUDGE COX: Gordon what?

BY THE WITNESS: Henderson.

BY JUDGE COX: Thank you.

BY MR. PARKER:

Q. What is your current position, Dr. Henderson?

A. I am professor of Political Science and director of the Computer Center at Tougaloo College, Tougaloo, Mississippi.

BY MR. PARKER: May it please the Court, we have obtained the original of the deposition of Henry J. Kirksey—excuse me for interrupting your testimony, Dr. Henderson. We also have, this is the deposition of Mr. Kirksey and documentary exhibits which are contained in the vault. Mr. Kirksey, as we indicated to the Court last time, had prepared and has drawn, and this deposi-

tion contains the evidence of a second single member statewide redistricting plan for the Mississippi House and the Mississippi Senate that equalizes population among the districts within variances of 5 percent. So this is the second plan of single member districts statewide to which this deposition is evidence.

[75] BY JUDGE COLEMAN: Let that be admitted.

(Received and marked in evidence as Exhibit P-25.)

BY MR. PARKER:

Q. Let me hand you your curriculum vitae, Dr. Henderson, and ask if this is a correct description of your qualifications and education. Hand a copy of it to the Court, please.

BY JUDGE COLEMAN: Are you proposing to qualify this gentleman as an expert in some particular field?

BY MR. PARKER: Yes, Your Honor.

BY JUDGE COLEMAN: In what field?

BY MR. PARKER: Dr. Henderson is professor of Political Science and director of the Computer Center at Tougaloo College. We propose to present him as an expert in census data, computers, computer programming, statistics, political science, legislative redistricting and county redistricting.

BY JUDGE COLEMAN: Do you care to challenge his qualifications as an expert, Mr. Attorney General?

[76] BY MR. SUMMER: We certainly challenge his qualifications insofar as the last two or three, you were going so fast there you lost me. I have not seen his qualifications yet, I would presume he is qualified as a political science expert, and computers since he is in that field, but as an expert in redistricting and what else was it?

BY MR. PARKER: Legislative reapportionment.

BY MR. SUMMER: Legislative reapportionment. We would certainly challenge his qualifications in that field.

BY JUDGE COLEMAN: Well I was trying to save a lot of testimony that would have an inevitable result, to-wit: a finding that the gentleman is an expert, you

do concede that he is an expert in political science and in computers so you may now qualify him if you can, Mr. Parker, on legislative reapportionment.

BY MR. PARKER: We ask that his curriculum vitae be admitted in evidence at this time.

BY JUDGE COLEMAN: It will be admitted.

(Received and marked in evidence as Exhibit P-26.)

[77] BY MR. PARKER:

Q. Dr. Henderson, would you describe to the Court your background and experience in legislative reapportionment and congressional redistricting, and also your formal training?

A. My formal training of course basically is a Doctor of Philosophy Degree in Political Science from Columbia University in New York City. I have been a teacher at the college and university level since 1956. I served on the staff of the Governor of Arizona and took an active, both privately and campaign managements, and in various affairs related to particularly the Arizona Legislature by virtue of the fact that my chief responsibility in the Governor's office of Arizona was legislative liaison. In my teaching which includes the field, broad field of American Government, I have had numerous occasions since 1956 when I began teaching at Rutgers University to deal with districting and apportionment, and since computers, especially within the last 10 to 12 years have become extensively used in redistricting and reapportionment I have in the course of my class preparation and research interest got into the business of using computers for redistricting repeatedly and extensively.

Q. Have you testified in any county redistricting on [78] legislative reapportionment cases?

A. I have testified in three, the Smith County districting case, Bassett versus Moore; the Hinds County redistricting case, Kirksey versus Hinds County Board of Supervisors; and the earlier version of this case, Conner versus Johnson.

Q. You testified by deposition?

A. By deposition.

Q. Have you written, have you published any books or are you about to publish any books?

A. I have written a book which is the product of approximately six years effort which will be published the publishers say, Harper and Rowe, in September, dealing with political parties. It is called specifically *An Introduction To Political Parties*, and it deals with, among other cases, single member districts, why the political science profession today generally thinks that they are, they produce more effective representation than multi-member districts, that deals, that contains a mention about a half a paragraph long, a brief summary of this particular case and deals with other matters related very directly to Conner versus Waller.

Q. And what is the title of the book?

A. It's called *An Introduction To Political Parties.*

[79] Q. And does devote itself in large part to legislative redistricting and apportionment?

A. It does.

BY MR. PARKER: We tender the witness, Your Honor.

BY JUDGE COLEMAN: He will be—

BY MR. ALLAIN: (Interrupting) Court please, he was tendered, I believe, in the Kirksey case as an expert witness in county redistricting, and Judge Nixon found him as not an expert in that area which is this Court I know sitting in one judge, but he found he was an expert in the field of political science and political behavior and political attitudes but not in the field of county redistricting. And one of the cases which he used to buttress his expertise was the Kirksey case which he was found not to be an expert in.

BY MR. PARKER: Let me ask this question, Your Honor.

Q. Since your testimony in the Kirksey case have you testified in other redistricting cases?

A. Yes, in Bassett versus Moore.

Q. Involving redistricting of what county?

A. Smith County.

[80] Q. What was—

A. (Interrupting) Also before Judge Nixon.

Q. And was your testimony accepted as an expert witness?

A. Yes.

Q. And was the result, the decision in that case, did it reflect your testimony and rely on your testimony?

A. Yes, it did.

BY JUDGE COLEMAN: Well I think that we should accept his testimony as an expert in these fields. I don't know just what special magic there is to expect testimony when the law is that the Court does not have to accept the word of an expert testimony unless it accepts it to be true. The Supreme Court itself has held that a man who calls himself an expert or who is one is not entitled to any more credibility than any other witness would be. It just means that he has special knowledge on a special subject, so we will accept this gentleman's testimony as an expert.

BY MR. PARKER:

Q. Would you describe for us, Dr. Henderson, what you teach at Tougaloo and what you taught at Texas Tech?

BY JUDGE COLEMAN: Now we have already accepted him as an expert in the field now, please, so let's move on to what he's going [81] to tell us about this case.

BY MR. PARKER:

Q. At my request, Dr. Henderson, have you performed an experiment with legislative reapportionment in Mississippi?

A. Yes, I did.

Q. When was this?

A. It was in the period between December of 1972 and April of 1973.

Q. What was the substance of this experiment, what did you attempt to do?

A. I accepted criteria which I was given by you for the purpose of designing a reapportionment plan for the Mississippi House and for the Mississippi Senate

which overall would have variances less than that in the existing plan.

Q. And what criteria did you employ in this experiment?

A. There was several criterion. What I am looking at in my hand are my notes so that I will make sure to cover all of them. First, that there should be 122 members in the House, 52 members in the Senate, that the data used should be population figures from the 1970 census, that the plan should not break county boundaries, that counties therefore, integral counties, should serve as building blocks, that the plan if [82] possible should provide districts more equal in population than those then existing, and that the combination of counties should be minimized, specifically that the plan should not include, should not provide for any district that combined more than three counties. And finally, that counties should not be considered contiguous if they only touched at a point, that they must share a common border that could be measured in miles.

Q. On your combining of three counties, no more than three counties, was this both the House plan and the Senate plan or only in one?

A. That was only in the House plan.

Q. Okay, employing these criteria what procedure did you use to perform this experiment?

A. My immediate job was to design a computer program that I could use at Tougaloo College in our computer center to come up with a computer generated plan that would meet all of these criteria.

Q. And did you so program your computer?

A. Yes, I did. I wrote a program which I refer to then and now as the Reapportionment Main m a i n Program. If I need to refer to it again that is the program that generated or will generate plans when it is used.

BY MR. ALLAIN: [83] Court please, if this is all in the deposition which has been previously introduced we would object to it as repetitious.

BY JUDGE COLEMAN: Have you already introduced this gentleman's proof by deposition, I had not gathered that.

BY MR. PARKER: His testimony, Your Honor, consists of two parts. One part will be live testimony so that the Court may hear it on Dr. Henderson's experiment showing that using whole counties without breaking any county boundaries the variances in the House plan and Senate plan can be considerably decreased than they are now. Secondly,—

BY JUDGE COLEMAN: Now have you already got that in in the deposition?

BY MR. PARKER: That is in his deposition.

BY JUDGE COLEMAN: Well, obviously I don't think we ought to have to duplicate that. Now what else do you propose to prove by him?

BY MR. PARKER: Secondly, we intend to prove that there are alternatives, numerous alternatives, even preserving whole [84] counties intact that would have provided districts with equivalent variances or smaller variances than the present districts which do not combine black majority counties with white majority counties to create district wide white majority.

BY JUDGE COLEMAN: Is that likewise in the deposition?

BY MR. PARKER: No, that is not in the deposition.

BY JUDGE COLEMAN: All right. Well now let's steer clear of the proof you've got in the deposition. We already have that, just let him go ahead and testify though on any and all subjects that he has not already given us the benefit of in his deposition.

BY MR. PARKER: Could I at least ask the witness, Your Honor, to identify these maps which we have prepared as the product of his work?

BY JUDGE COLEMAN: Certainly.

BY MR. PARKER:

Q. Ask if you can identify these maps, Dr. Henderson?

A. I can identify them, would you like for me to tell what they are?

[85] Q. Yes, would you tell us what they are.

A. As the result of the use of the computer program I described as the Reapportionment Main Program three plans were generated, two plans for the House and one for the Senate and from the computer printouts which provided a good deal of information about each of the districts I then drew these maps and these are, I assume, Xerox copies of the original maps which I still have the original copies of.

BY MR. PARKER: Hand those up to the Court, please. Ask that these maps be admitted in evidence, Your Honor, as the product of Dr. Henderson's work.

BY JUDGE COLEMAN: They may be admitted.

(Received and marked in evidence as Exhibit P-27.)

BY JUDGE COLEMAN: Apparently we have Senate and House and House, do you have maps for both the Senate and the House?

BY MR. PARKER: Yes.

BY JUDGE COLEMAN: Well I'm only holding a House map, Judge Russell has a House map, Judge Cox has a Senate map. Suppose you give us the maps for both, please, sir, if you have [86] them.

BY MR. PARKER: We have two House plans and one Senate plan.

BY JUDGE COLEMAN: All right. Well now let's see, just a minute now, the one that Judge Russell is holding here is 4-18-73, the one I have is 3-10-73, so I'll give you both of those, Judge Russell.

BY MR. PARKER: Just handed up copies for all the judges of the three maps.

(Off the record discussion between members of the Court.)

BY JUDGE COLEMAN: All right.

BY MR. PARKER: Q. State again for us, Dr. Henderson, the variances contained in your plans. Refer please to the exhibit.

BY JUDGE COLEMAN: Have these maps been marked, have they been admitted in evidence and marked?

BY DEPUTY CLERK: Yes, sir.

BY JUDGE COLEMAN: All right. Well of course it's not necessary for him to state that except to point out anything that might [87] be of crucial importance. In other words the maps speak for themselves is what I'm trying to say.

BY MR. PARKER: Yes.

Q. Variances for the House plan 10.62, second House plan 13.06. These are the total deviations, total plus and minus?

A. Yes, sir.

Q. And the senate plan is a total deviation from population equality of 10.51 percent, is that correct?

A. Correct.

Q. And that's total plus and minus?

A. Yes, it is.

Q. So all three of these plans then beat the variance of the current House plan and Senate plan by approximately 8 to 9 percentage points, is that correct?

A. That is correct.

BY JUDGE COLEMAN: How do they compare as to average variance? I mean you can have one or two counties or one or two districts where you will have, say a 19 percent variance possibly forced by geographical situations, you start at the Tennessee line and you're going to wind up at the Gulf where you can go no farther and so forth. I would like to know how your plan varies from the 1975 [88] Legislative Act on average variance throughout the state as, you know, average variance between all districts.

BY THE WITNESS: Your Honors, let me give you five figures. The maximum plus deviation on the House plan is plus 6.74, the maximum minus is minus 6.32. Those two figures I believe you have before you on one of—right. Now, the districts in the seats over plus or minus 4 percent is 5. The district or the seats over plus or minus 6 is 3, and districts over plus or minus 8 are zero, and in terms therefore of average deviation over the entire districts the average is much lower than under the existing plan.

BY JUDGE COLEMAN: Well now you are qualified as a computer expert, and this Court needs all the help

it can get on this matter, I'm asking you to tell us specifically what the variance is between your plan, average variance throughout the entire state, and the one enacted by the Legislature. For example, one percent of the norm on one of these cases only amounts to what, 180 people.

BY THE WITNESS: In the House, yes.

[89] BY JUDGE COLEMAN: In the House. So as the Supreme Court recognized in various jury discrimination cases, percentages don't mean too much, do not mean too much unless you know what the percentage involves. In your House plan, for example, a one percentage deviation is only 180. In the Senate it would be what, approximately 400?

BY THE WITNESS: Approximately.

BY JUDGE COLEMAN: Right. Now, to get the real picture as to whether or not anybody has been discriminated against on a one man one vote basis, I'm not talking about racial basis now which is a different question, but on a one man one vote basis I would like to have the real computerized figures as to the distinction and average variations between your plan and the plans that the Legislature finally in a, by collecting a majority of somewhere for some particular bill finally enacted a law. Can you give us—

BY THE WITNESS: (Interrupting) Your Honors, I am not sure that I can lay my finger on that right now.

BY JUDGE COLEMAN: But you could do it, couldn't you, if you were given [90] the time?

BY THE WITNESS: I could do it, yes, I did do it.

BY JUDGE COLEMAN: All right. Now let's keep this in mind then, when you do complete your testimony we would like for you to make that calculation, have plenty of time to be sure you are doing it accurately and not under the pressure of being on the Witness Stand and then give it to us.

BY THE WITNESS: I will be happy to do so.

BY JUDGE COLEMAN: Very good.

BY MR. PARKER:

Q. Under these three experimental drawings are any county lines broken?

A. None.

Q. Can you tell us whether these plans that you have drawn provide the minimum possible variances from population equality in House and Senate districts using the criteria that you enunciated in your testimony?

A. They do.

Q. Are you proposing to the Court that these plans be [91] used as a remedy to remedy the complaint of discrimination, racial discrimination, that plaintiffs have made?

A. No, I'm not.

Q. Why not?

A. Because they were not designed for that purpose. They were as you have described, an experiment, as I would describe them, it really comes down to the same thing as an exercise. Furthermore they are incomplete. They do contain multi-member districts and there is nothing, no indication, not was I requested by you to make a decision or to make a recommendation as a part of the plan as to whether there should be place or residence requirements or whether lines should be drawn for single member districts within these multi-member districts. And finally, they do contain multi-member districts by implication because I did not attempt to eliminate multi-member districts. And as I have said previously, I think the standard finding of political science, professional political science today in this country, is that single member districts are to be avoided.

Q. I'm sorry, I didn't hear you.

A. That single member districts are to be avoided in a reapportionment scheme.

[92] Q. Single member districts—

BY JUDGE COLEMAN: I beg your pardon, how many members, what is the largest number of representatives or senators provided in any one district in your plan? Do you have more than, do you have more than five in any one district, for example?

BY THE WITNESS: Not that I remember. I believe not almost certainly.

BY JUDGE COLEMAN: I suppose we should have a written tabulation of this by counties, we might not altogether read the maps correctly because the county boundaries are in black and so are the district boundaries, the district boundaries are a little more heavily shaded if we are able to pick it up. Do you have a compilation by district number and the counties in the district and so forth?

BY MR. PARKER: Excuse me, Your Honor. If I may answer that is contained in the exhibits to the deposition, Your Honor, the computer printout.

BY JUDGE COLEMAN: Oh, that is in the deposition, very good. Now then I wanted to ask you this one further question. You have [93] just made a statement about what the political scientists think, which of course political scientists are entitled to their views on that subject. Have you studied the decision of the Supreme Court of the United States of Mayhan v. Howell?

BY THE WITNESS: That's a Virginia case?

BY JUDGE COLEMAN: Right.

BY THE WITNESS: Yes, I have, last year.

BY JUDGE COLEMAN: And you are aware of the fact that in one particular county up near Washington the Virginia legislature had a county that was entitled to 10 representatives. They broke the county into two districts, five to each district, and the Supreme Court of the United States allowed that to stand as a reasonable exercise of legislative discretion. You are familiar with that in Mayhan v. Howell?

BY THE WITNESS: Yes.

BY JUDGE COLEMAN: I wonder what your understanding as a political scientist is of the rationale which prompted the [94] Supreme Court to allow that kind of result to stand because Virginia is a state that is under the Voting Rights Act the same as Mississippi.

BY THE WITNESS: I really haven't thought about that too carefully, Judge Coleman, but what I would say as a political scientist, I think, is that it must have been something in the presentation of the record that

led to that result, something perhaps unique to Mayhan versus Howell situation.

BY JUDGE COLEMAN: Well there were numerous districts in Virginia that elected more than one member which flies straight into the face of your basic proposition that all districts should be single member districts. You say that political scientists are agreed on that, you didn't say whether that was a matter of constitutional law or not.

BY THE WITNESS: I would not have said that.

BY JUDGE COLEMAN: As a matter of constitutional law.

BY THE WITNESS: As a matter of constitutional law. The closest that one could find, or that I would find to that, would be [95] the South Dakota case, which you have cited here at the last hearing, as a matter of fact.

BY JUDGE RUSSELL: North Dakota.

BY THE WITNESS: North Dakota case, I'm sorry.

BY JUDGE COLEMAN: Well of course the extent of our jurisdiction as a Federal Court dealing with a State matter is constitutional law. We have no business in this case whatever except to enforce the Federal Constitution. Of course you realize that I'm sure as a man who has a Doctor of, Doctor's Degree in Political Science.

BY THE WITNESS: Yes, sir.

BY JUDGE COLEMAN: Go ahead, Mr. Parker.

BY MR. PARKER:

Q. I might have misunderstood you, Dr. Henderson, but I heard you to say that single member districts are to be avoided. Was that what you intended to say?

A. Statements like single member districts are to be avoided are to be avoided. I did not, I meant to say precisely the opposite, that single member districts are to be preferred; multi-member districts are to be [96] avoided. I apologize.

Q. And does this represent substantial predominant view within the political science profession today?

A. At the present time I think it is the view which you will find clearly presented in the professional literature.

Q. Now have you examined House Bill 1290 and Senate Bill 2976?

A. Yes, I have.

Q. Do these bills provide the most equality of population it is possible to achieve, even keeping county boundaries intact?

A. No, they do not.

Q. Have you attempted to determine how many plans it is possible to derive using this county unit system keeping county boundaries intact and provide more equality of population among the districts than House Bill 1290 and Senate Bill 2976?

A. Yes, I have.

Q. What procedure did you use to do that?

A. This brings me to the second of the computer programs which I wrote in early April of 1973 to which I give the name The Reapportionment Combo C o m b o Program, and—

BY MR. ALLAIN: [97] (Interrupting) Court please, all this has been in the deposition.

BY MR. PARKER:

Q. Well without going into the program—thank you, counsel, without going into the program how many plans is it possible to draw keeping county boundaries intact and provide more equality of population than House Bill 1290 and Senate Bill 2976?

A. At least several hundred.

BY JUDGE COLEMAN: That raises the question in my mind, if there are at least several hundred methods by which it could be avoided, how do you decide which one is to be preferred if it is going to be done on an inelastic the Court so orders basis. If you've got several hundred alternatives that would have given you a little better, little better, it would have to be only a little better, at least, uhh, you're going to tell us about that after you make these computations that I've asked you for. Which one is preferable, does it come down altogether to a matter of numbers or there any other

factors the legislature might have in mind as to which number it might prefer?

BY THE WITNESS: Well, clearly I think the one man one vote rule is [98] going to be a consideration and that's going to involve mere counting of numbers, certainly, whether it can be challenged as being racially discriminatory is another consideration. There are going to be other considerations.

BY JUDGE COLEMAN: In other words, I think we might as well face up to it, shouldn't we, that it's not a matter of pure dee mathematics only as to the division of the population, because if it were all you would have to do would be to crank up the computer and of course nobody else would ever have to intervene, but there are other factors which the Supreme Court recognizes that a state may consider as to which is the preferable number so long as it is not so aggrievious as to be entirely out of line. Now, as counsel has pointed out we've got a greater variance here in some districts than has ever been accrued before. I think it was about 16 percent was the maximum in Virginia, wasn't it?

BY MR. PARKER: That's correct.

BY JUDGE COLEMAN: In Mayhan V. Howell, so when we are talking about there are a hundred or more better plans numerically our con- [99] sideration doesn't really stop there, does it, in your view as an expert, as a political scientist?

BY THE WITNESS: No, sir, it does not stop there.

BY JUDGE COLEMAN: All right.

BY MR. PARKER:

Q. I'll ask you if you have examined these multimember floaterial districts in House Bill 1290 and Senate Bill 2976 to determine their effect on black population concentrations?

A. Yes, I have.

Q. What have you found?

A. As a result of your request to me to make the studies I have prepared two memoranda which I would like to bring out now, if I may.

Q. Well before you get into the memoranda could you describe for us whether in your view these multi-member and floaterial districts have a dilution effect on black voting strength?

BY JUDGE COLEMAN: First now you must state whether you have an opinion. If you do, state the opinion and then we want the basis for this.

BY THE WITNESS: [100] I have an opinion.

BY JUDGE COLEMAN: All right.

BY THE WITNESS: And that opinion is that in fact multi-member districts, which several can be identified in the existing plan, does indeed serve to dilute black voting strength.

BY JUDGE COLEMAN: All right, now let's identify the districts.

BY MR. PARKER:

Q. Let me hand you these two maps, Dr. Henderson, and ask you whether these maps accurately reflect the dilution that you have testified to?

BY JUDGE COLEMAN: First now tell me the districts, are you talking about the House or the Senate or both?

BY THE WITNESS: I will be talking about both.

BY JUDGE COLEMAN: All right. Tell me first the House districts in which you think that there has been a racial dilution by the 1975 legislation.

BY THE WITNESS: In the Senate Districts 1, 8, 16, 18, 19, 24, that's it.

[101] BY JUDGE COLEMAN: All right, sir. Now tell us why you think that there is racial dilution in each of these districts.

BY THE WITNESS: In each of these districts—

BY JUDGE COLEMAN: Take them one at a time, why is there racial dilution in number 1?

BY THE WITNESS: District number 1 consists of DeSoto, Lafayette and Marshall counties. Marshall is a black majority population county. It is given two seats and the variance is minus 1.37.

BY JUDGE COLEMAN: It's given two, you mean it is given two Senate seats?

BY THE WITNESS: Correct.

BY JUDGE COLEMAN: This district is given two senate seats?

BY THE WITNESS: Correct.

BY JUDGE COLEMAN: For a total population of how much?

BY THE WITNESS: 84,093.

[102] BY JUDGE COLEMAN: 84,093. How many people are there in Marshall County? You say it's a total black county, I don't mean total black but a majority of black.

BY THE WITNESS: The total population of Marshall County.

BY JUDGE COLEMAN: Yes.

BY THE WITNESS: Is 24,027.

BY JUDGE COLEMAN: Now that's about approximately 16,000 too few people to have a senatorial district of their own, isn't it?

BY THE WITNESS: That's correct.

BY JUDGE COLEMAN: So obviously it is going to have to be combined with somebody somewhere.

BY THE WITNESS: That is correct.

BY JUDGE COLEMAN: So who would you combine it with in order to avoid racial dilution?

BY THE WITNESS: Marshall County can be placed in 60 other districts, [103] all of which have a variance within the range of the Senate plan and several of these are districts with a majority of black population, including—

BY JUDGE COLEMAN: Let me interrupt you just a minute. I feel sincerely that you are getting a little extravagent or maybe it tends to mislead when you say 60 other districts, it couldn't possibly be contiguous to 60 other counties. I'm asking you what other counties could Marshall be combined with to avoid this racial dilution, and I'm very interested to know that.

BY THE WITNESS: Well, I have to—

BY JUDGE COLEMAN: What other counties?

BY THE WITNESS: Well I can begin by giving you one example. One possibility is combining Marshall with Tate and that would give you a population 55.55 percent black entitled to one senate seat and the variance of minus .14.

BY MR. PARKER:

Q. What is the variance of the current district 1 as determined by Senate Bill 2976?

A. Minus 1.37.

[104] BY JUDGE COLEMAN: Excuse me, what I'm getting at is, see we've been through this thing in '67 and '71, we've been living with this reapportionment thing for 10 years and out of sheer necessity we have acquired some acquaintance with it, and of course if you were to combine Marshall with Tate then you would of course have to shift the other districts around in order to meet the population norms, wouldn't you?

BY THE WITNESS: That's correct.

BY JUDGE COLEMAN: Okay. Now then, anyway Marshall County alone has to be combined with somebody?

BY THE WITNESS: That is correct.

BY JUDGE COLEMAN: Now your next district was the eighth district, wasn't it?

BY THE WITNESS: That's right.

BY JUDGE COLEMAN: And what district is that?

BY THE WITNESS: This is the district that contains Panola, which is a [105] majority black population, with Yalobusha.

BY MR. PARKER:

Q. What is the racial composition of Yalobusha, I mean is it white majority or black majority?

A. Yalobusha?

Q. Yes.

A. It's white majority.

BY JUDGE COLEMAN: How much?

BY THE WITNESS: There are approximately 7,000 whites in Yalobusha and 4800 blacks.

BY JUDGE COLEMAN: So you've got a—

BY THE WITNESS: (Interrupting) I could calculate it if you would like, I brought a calculator.

BY JUDGE COLEMAN: Very good, let's calculate it. What is the white majority in Yalobusha County, the actual white majority according to the census of 1970?

BY THE WITNESS: 59.8.

BY JUDGE COLEMAN: I'm not talking about percentages now, I'm talking about [106] people. People vote, not percentages. What is the actual number in people of white majority in Yalobusha County?

BY THE WITNESS: There are 7,071 white persons in Yalobusha as of the 1970 census.

BY JUDGE COLEMAN: And how many blacks?

BY THE WITNESS: 4,814.

BY JUDGE COLEMAN: All right, now then that gives you a white majority of how many?

BY THE WITNESS: Approximately 60 percent.

BY JUDGE COLEMAN: You've got a calculator, give me the actual number.

BY THE WITNESS: Oh, I see.

BY JUDGE COLEMAN: 2257, isn't it?

BY THE WITNESS: Yes, it is.

BY JUDGE COLEMAN: All right. Now what is the black majority in Panola [107] County?

BY MR. PARKER: Just give him the figure.

BY THE WITNESS: 692.

BY JUDGE COLEMAN: So that's a black county only by 692?

THE WITNESS: That's correct.

BY JUDGE COLEMAN: Out of a total of what?

BY THE WITNESS: In the—

BY JUDGE COLEMAN: In the entire county. What I'm saying is this is not an overwhelmingly black county, apparently.

BY THE WITNESS: It is not an overwhelmingly black county, it is a black majority county.

BY JUDGE COLEMAN: Now it's a black majority county but that, I don't want to stop at that, I'm trying to develop a record here in which we can see the whole

picture. How many white people and how many black people are in Panola County?

BY THE WITNESS: [108] 13,061 white.

BY JUDGE COLEMAN: All right.

BY THE WITNESS: 13,753 black.

BY JUDGE COLEMAN: Black. Which means you've got a black preponderance maybe of what, one percent, two percent?

BY THE WITNESS: In that rate, certainly.

BY JUDGE COLEMAN: Just about two percent. Now that's hardly enough to have any appreciable impact on an election if everbody, if all the blacks were voting for a black and all the whites were voting for a white, does it?

BY THE WITNESS: That's a difficult question to answer.

BY JUDGE COLEMAN: It's not like Marshall County, for example, is it?

BY THE WITNESS: No.

BY JUDGE COLEMAN: Marshall has a much larger percentage of black people?

BY THE WITNESS: Correct.

[109] BY JUDGE COLEMAN: Now let's go to your District 16, what district is that?

BY MR. PARKER: Let me ask.

BY JUDGE COLEMAN: Yes.

BY MR. PARKER:

Q. District 8 is a district wide white majority, is that correct?

A. I'm sorry?

Q. District 8, Senate District 8, who predominates in that district, white or black?

A. Whites.

BY JUDGE COLEMAN: Well, neither one of these counties has enough people to elect a Senator, that's for sure. But if Yalobusha could elect one the whites would have an overwhelming majority. If Panola could elect one, if they had enough people and could elect one, they

would have a two percent black majority and that's what we're talking about here, isn't it?

BY THE WITNESS: Yes.

BY JUDGE COLEMAN: [110] That's right.

BY MR. PARKER:

Q. Is it possible to combine Panola with any other counties that would not yield a district wide white majority, that would in fact yield a district with a majority of black population?

A. Yes, there are 16 such possibilities.

Q. Would you give us one example?

A. Panola can be combined with Quitman for a district that is 53.54 percent black.

Q. What is the variance of that district?

A. .20.

Q. And what is the variance of the present district in which Panola, a black majority county, is combined with Yalobusha, a white majority county?

A. Minus 9.11.

Q. So there's a difference of 9 percentage points of variance?

A. Approximately, yes.

BY JUDGE COLEMAN: Would you as a political scientist who has made a special study of this, and obviously your credentials indicate that you are very knowledgeable, would you think that 3., a 3 percent difference in black and white people has any real significance in the overall [111] picture of how an election is going to turn out, even in Mississippi? Based on your studies and your knowledge and your experience, are you prepared to tell us testifying as an expert that that 3 percent difference has any real significance when they get to the ballot box and look at the candidates and look at them as individuals and consider their qualifications and all that business?

BY THE WITNESS: My answer to that would be that that is a small enough percentage difference as to make predictions difficult.

BY JUDGE COLEMAN: Well I think that is a fair answer and I congratulate you. Now let's take 18, District 18. District 18 is the next district.

BY THE WITNESS: I thought—

BY JUDGE COLEMAN: Excuse me, I may have skipped one.

BY THE WITNESS: 16.

BY JUDGE COLEMAN: You're right, 16.

BY THE WITNESS: [112] 16 contains three counties, Attala, Carroll, which is a majority black population, and Leake. And the total black population of that district is 40 percent. It has one seat, and the variance under Senate Bill 2976 is 8.02.

BY JUDGE COLEMAN: Carroll County is the only predominately black county in that district?

BY THE WITNESS: That's correct.

BY JUDGE COLEMAN: And what is the difference in people in numbers between the white and the black population, not in percentage points. The reason I put that is because percentages in the House amount to only, one percentage point amounts to only 180 people.

BY MR. PARKER: These are the Senate Districts, Your Honor.

BY JUDGE COLEMAN: All right, and the Senate amounts to only 400.

BY MR. PARKER: 420.

BY JUDGE COLEMAN: 420.

BY MR. PARKER: [113] 426.

BY JUDGE COLEMAN: 426. You keep raising the bid, all right. What is the difference—

BY THE WITNESS: (Interrupting) Carroll County—

BY JUDGE COLEMAN: (Continuing) between white and black in Carroll?

BY THE WITNESS: Do you want just the difference or do you want all three figures?

BY JUDGE COLEMAN: How many white people, how many black, and what is the difference, we'll follow that format for all the rest of these districts. I'm going to look at them because you say after your long study

that these are the ones that we ought to concentrate on so we'll do that.

BY THE WITNESS: Total population is 9,397, population black is 4,771, and the difference is—

BY JUDGE COLEMAN: White is how much?

BY THE WITNESS: 4,626.

[114] BY JUDGE COLEMAN: 4626 white?

THE WITNESS: Right.

BY JUDGE COLEMAN: You mean that there's only 145 difference between white and black in Carroll County?

BY THE WITNESS: That's correct.

BY JUDGE COLEMAN: So that makes it a black majority county but it doesn't have near the majority I would have thought it had. It's not a predominately black county by any means, is it?

BY THE WITNESS: It's a majority black county in percentages.

BY JUDGE COLEMAN: In percentages.

BY THE WITNESS: In percentages, correct.

BY JUDGE COLEMAN: I'm getting down to the realities of people and numbers. There's a great desire on everybody's part you know to settle everything by percentages, but percentages can be very misleading, it depends on [115] how many folks you are fooling with in the equation or in the percentage. So Carroll County only has to my surprise, and I've known it all my life, I used to serve as District Attorney and Circuit Judge in that county a long time ago, and it only has a majority of black of 145?

BY THE WITNESS: That's correct.

BY JUDGE COLEMAN: Okay, thank you. Now let's go on to the next one, 18, you were talking about 16, weren't you. What is the district, what is, what counties are in District 18?

BY THE WITNESS: District 18 under the present plan contains Noxubee and Oktibbeha.

BY JUDGE COLEMAN: Okay, sir. The total population of Noxubee is?

BY THE WITNESS: 14,288.

BY JUDGE COLEMAN: And Oktibbeha?

BY THE WITNESS: 9,397 black.

BY JUDGE COLEMAN: [116] No, I'm talking about the total population of both counties, Dr. Henderson.

BY THE WITNESS: Oh, of the district, I'm sorry.

BY JUDGE COLEMAN: No, it was both counties, of each county in the district, what is the total population of Noxubee County?

BY THE WITNESS: 14,288.

BY JUDGE COLEMAN: I so understood you, now what is the total population of Oktibbeha?

BY THE WITNESS: 28,752.

BY JUDGE COLEMAN: So neither of these, both of these counties have got to be combined with somebody, haven't they?

BY THE WITNESS: Yes.

BY JUDGE COLEMAN: In order to get anywhere close to the required norm. All right, Oktibbeha has a small white majority and Noxubee a considerable black majority?

BY THE WITNESS: I think I heard you backwards, I'm sorry.

[117] BY JUDGE COLEMAN: I said that is it, I'm speaking now from my recollection of prior testimony in this case. Oktibbeha has a small white majority of population?

BY THE WITNESS: It has about 65 percent.

BY JUDGE COLEMAN: It does?

BY THE WITNESS: Yes.

BY JUDGE COLEMAN: All right. Suppose you give us the figures on that then, please, sir, total of white and total of black.

BY THE WITNESS: All right.

BY JUDGE COLEMAN: In Oktibbeha County.

BY THE WITNESS: Let me give you the total population and then the total black and then the difference will be the whites.

BY JUDGE COLEMAN: All right.

BY THE WITNESS: 28,752.

[118] BY JUDGE COLEMAN: All right.

BY THE WITNESS: 10,004.

BY JUDGE COLEMAN: Now that's the black population?

BY THE WITNESS: Correct, 18,748 is the difference.

BY MR. PARKER: In fact there are 179 others, so the total white population of Oktibbeha is 18,569.

BY JUDGE COLEMAN: All right. Now we get over to Noxubee County, of course it's on the Alabama line. You can move it north or south or west but you can't move it east.

BY THE WITNESS: That's correct.

BY JUDGE COLEMAN: Now where would you move it?

BY THE WITNESS: There—

BY JUDGE COLEMAN: With reference to adjoining counties, it's got to be moved to some adjoining county, it adjoins Lauderdale on the South, let's see, Kemper on the South, it joins [119] Kemper on the South which is another predominately black county.

BY THE WITNESS: Right.

BY JUDGE COLEMAN: And then it adjoins Winston on the West, which is fairly evenly divided. Does it join Lowndes on the North?

BY THE WITNESS: Yes, and Oktibbeha.

BY JUDGE COLEMAN: And Oktibbeha.

BY THE WITNESS: There are two possible combinations of counties which will be majority black.

BY JUDGE COLEMAN: Okay.

BY THE WITNESS: One of them is Noxubee, Kemper and Winston.

BY JUDGE COLEMAN: Okay.

BY THE WITNESS: And that will give you a district with a population that is 51.73 percent black and the variance of .69.

[120] BY JUDGE COLEMAN: That's only a 1.73 percent majority for the blacks, and according to your prior testimony what that would mean is unpredictable as to the impact it would have on an election.

BY THE WITNESS: On an election in the future that was my—

BY JUDGE COLEMAN: As to between whites and blacks.

BY THE WITNESS: That was my prior testimony.

BY MR. PARKER: May I ask a question?

BY JUDGE COLEMAN: Yes.

BY MR. PARKER:

Q. My question, Dr. Henderson, is in which district would black voting strength count more, a district that's a white majority district, District 18, 23,431 whites and only 19,404 blacks, or a district that is 51.73 percent black?

A. In the second instance I think is correct.

BY JUDGE COLEMAN: I think that gives us a fairly good picture of District 18, now 19 must be somewhere nearby.

[121] BY THE WITNESS: It is, it's Kemper and Lauderdale.

BY JUDGE COLEMAN: Kemper and Lauderdale. All right, now Kemper is a very small county population wise and a large county area wise, one of the largest counties in the state in area. How many people are living in Kemper County of all shades?

BY THE WITNESS: 10,233.

BY JUDGE COLEMAN: 10,233, and how many in Lauderdale?

BY THE WITNESS: 67,087.

BY JUDGE COLEMAN: 087. Kemper County has about a fourth of enough people to qualify for one Senator?

BY THE WITNESS: Yes.

BY JUDGE COLEMAN: So you would combine it with Neshoba, I guess, you have already given Noxubee to Winston and Kemper only joins Noxubee, Winston, Neshoba and Lauderdale, cornered with Newton.

BY THE WITNESS: [122] Well, one of the possibilities that I indicated for District 18 is Noxubee, Kemper and Winston.

BY JUDGE COLEMAN: Oh, put those three together. So you would solve Noxubee and Kemper at one lick by putting both of them in one district, and that

district would come out with a 51.73 black margin?

BY THE WITNESS: That's correct.

BY JUDGE COLEMAN: All right, sir. Now let's go, Dr. Henderson, to your next and last district, I believe, 24.

BY THE WITNESS: 24 contains four counties, two of them are majority black. The counties are Claiborne, which is majority black.

BY MR. PARKER:

Q. What is the percentage?

A. 74.57 percent black. Copiah.

BY JUDGE COLEMAN: Well now how many people do we have in Claiborne County to be shifting around in a senatorial district of 40,000. It strikes me that there is less than 10,000 people in Claiborne County.

BY THE WITNESS: [123] 10,086.

BY JUDGE COLEMAN: Okay. Now your next county?

BY THE WITNESS: Copiah, which is also a majority black county.

BY JUDGE COLEMAN: And Copiah has immensely more people too, doesn't it?

BY THE WITNESS: 24,749.

BY JUDGE COLEMAN: Okay. Now if that were put in one district itself, suppose we put Claiborne and Copiah in one senatorial district alone, it would still be 6,000 short of a senatorial district—

BY THE WITNESS: (Interrupting) Approximately.

BY JUDGE COLEMAN: (Continuing) so we couldn't do that, could we?

THE WITNESS: You mean just leave it by itself a single district?

BY JUDGE COLEMAN: Yes.

BY THE WITNESS: No.

BY JUDGE COLEMAN: [124] No.

BY MR. PARKER:

Q. Who could you add to that?

A. Jefferson.

BY JUDGE COLEMAN: Okay.

BY MR. PARKER:

Q. And what would be the percentage black and the black majority district?

A. Of Claiborne, Copiah and Jefferson?

Q. Yes.

A. 61.08 percent.

BY JUDGE COLEMAN: How many people are in Jefferson County?

BY THE WITNESS: 9,295.

BY JUDGE COLEMAN: Just a few less than, well nearly a thousand less than Claiborne.

BY THE WITNESS: Claiborne.

BY MR. PARKER:

Q. What would be the variance of a district Claiborne, Copiah and Jefferson?

A. 3.51 percent.

[125] Q. And that would be one seat?

A. That would be one seat.

Q. And what is the variance when you combine Claiborne and Copiah black majority counties with Lincoln and Simpson, white majority counties, for an overall white majority?

A. That county, which is the present county, that district has two seats and the variance is minus 5.02.

BY JUDGE COLEMAN: We have not found out from you, what other county do they have in here with Claiborne, Copiah and Jefferson?

BY THE WITNESS: Lincoln and Simpson.

BY JUDGE COLEMAN: Is this five counties in this district?

BY THE WITNESS: No, I'm sorry, four; Claiborne, Copiah, Lincoln and Simpson.

BY JUDGE COLEMAN: We got off on theoretical districts, let's get back now, the district as it now stands is Claiborne, Copiah, and who else?

BY THE WITNESS: Lincoln.

BY JUDGE COLEMAN: [126] Lincoln and Simpson. Okay, so what you propose is instead of combining Claiborne with Copiah and Lincoln and Simpson, you

move it west, well you'd just bring in Jefferson and set up one district right there alone?

BY THE WITNESS: Correct.

BY JUDGE COLEMAN: Well then how would that leave Lincoln and Simpson, do they have enough for a senator? Let's see, Judge Russell do you have the population of Lincoln County there in front of you?

BY JUDGE RUSSELL: 26,198.

BY JUDGE COLEMAN: All right, and Simpson has what?

BY JUDGE RUSSELL: 19,947.

BY JUDGE COLEMAN: 947. That's 46,145 people on a norm of approximately 40,000. Of course that points up the problem when you start moving a county to take care of one problem you run into all kinds of others. How many districts did they set up altogether in this '75 law, I'm sorry, I haven't looked at it closely enough to remember. [127] Senatorial districts, how many did they set up altogether?

BY THE WITNESS: 22.

BY JUDGE COLEMAN: 22 total districts?

BY THE WITNESS: In the Senate.

BY JUDGE COLEMAN: That's what I say, they had 22 districts for the election of 53 Senators, 52 Senators, which is it?

BY THE WITNESS: 52.

BY JUDGE COLEMAN: 52. And there are six of the 22 districts that you think are out of line from a racial dilution standpoint, that's 1, 8, 16, 18, 19 and 24.

BY MR SUMMER: Court please, I think he's wrong on his districts—

BY JUDGE COLEMAN: Well let's get a copy of the bill right quick and see. The bill speaks for itself. There are 33 districts instead of 22, Dr. Henderson, according to this bill.

BY THE WITNESS: [128] I'm sorry.

BY JUDGE COLEMAN: 33 districts. All right. So out of 33 districts you say that there are 8 in which there's racial dilution—

BY MR. PARKER: (Interrupting) Your Honor,—

BY JUDGE COLEMAN: (Continuing) and you have explained your reasons for saying so.

BY MR. PARKER: He has not finished his testimony on that issue, Your Honor.

BY JUDGE COLEMAN: Well, are there any more districts? I thought you named 8.

BY THE WITNESS: In the Senate.

BY JUDGE COLEMAN: In the Senate, that's what I'm talking about, in the Senate. We are dealing with the Senate now. But out of 33 districts in the Senate you say 8 are out of line, but one of those districts, for example, only has a difference of 1.59 to 1.73 percent, which is approximately 600 people that's the difference between [129] black and white, but we'll weigh all that as we come to it. You may go ahead now, I think I've got it nailed down as to what he, as to which districts he thinks are out of whack and which are not.

BY MR. PARKER:

Q. Are there other districts in the Senate plan, Dr. Henderson, that are discriminatory because of county wide voting?

A. Yes, there are.

Q. What counties would those include?

A. To begin with, we can take the case of Hinds because of the operation there of at large elections in the Senate, the operation of at large election systems serve to dilute black strength in a county in which blacks are numerous to form a senate district of their own, and there are other counties of that same character.

Q. Would you name those counties?

A. Harrison, Lauderdale, Warren.

Q. These are all counties with substantial black population concentration?

A. Yes.

Q. And you're saying that black voting strength is diluted by county wide voting?

A. Correct.

[130] BY JUDGE RUSSELL: What is the black population of Harrison?

BY MR. PARKER: I think it's about 22,000, Your Honor.

BY JUDGE COLEMAN: If they were all picked up and put in one district to themselves they would only have half the total population for one Senator in Harrison County, isn't that so?

BY THE WITNESS: That's true.

BY JUDGE RUSSELL: I didn't think it was that high, that was the reason I was asking.

BY MR. PARKER: 22,743 according to my figures.

BY JUDGE COLEMAN: Well now how do you find discrimination in that situation? Suppose the Court took every black person in Harrison County and herded him off into an area for the election of one Senator. There would still have to be at least 18,000 white people in that same district with them, and then you would eliminate any possibility of as much as a black vote in the other senatorial districts in Harrison County. I don't [131] follow the logic of a lot of this. Is there any part of Harrison County that you could take it as it is and just arbitrarily carve out an area where you would have a majority of black people?

BY THE WITNESS: I have not attempted to do that, Judge Coleman. I would rather not respond to that.

BY JUDGE COLEMAN: Well you would have to say that so far as you know there is no such district, or if there is one you have never found it out.

BY THE WITNESS: I would agree to that.

BY JUDGE RUSSELL: Isn't it a matter of fact that they are pretty well distributed throughout Harrison County?

BY THE WITNESS: To some extent they are, yes. That is part of the problem.

BY JUDGE RUSSELL: Where is that concentration, I live down there and I'm just trying to figure out—

BY THE WITNESS: (Interrupting) Well, I don't know enough really to want to respond to that question.

[132] BY JUDGE COLEMAN: Well why did you, you're testifying here and trying to help the Court and I think you've been a very candid witness; frankly, why

did you say to us that Harrison County was one of those counties in which an election at large would discriminate against the black people, I don't quite get with you.

BY THE WITNESS: I think in part it goes back to what, to the question that you asked me before, what difference does it make if the percentage is that close, and I said in terms of predicting the outcome of an election it's not predictable. But I think as a political scientist what we are getting at here is the question of effective representation and the possibilities that blacks can get together as a cohesive group to try to leave an impact upon an election outcome, and if they are dispersed by the drawing of district lines or if they are equally dispersed by virtue of the fact that they get to cast a ballot for several candidates, more than one candidate, I think it is easy to demonstrate and I think I have done so, for example with respect to Hinds County, with respect to the City of Jackson in particular, that they have been denied effective representation, they can have no impact on the outcome [133] period.

BY JUDGE COLEMAN: We're going to have to come to that a little later on, I guess it's about time we all adjourned for lunch, but it has been traditionally true down through the years, even before the Voting Rights Act of 1965, that the black people of Harrison County voted any time they got ready and in substantial numbers, didn't they?

BY THE WITNESS: Well, I think that you can demonstrate the blacks, for example, I hope I am answering your question. I think for example my own study in Jackson demonstrates that blacks voted in very substantial numbers in the election of 1971 and left zero impact on that income and could not have had an impact on that outcome.

BY JUDGE COLEMAN: That depends on how they chose to vote, wouldn't it? Let's get back to Harrison County and then we will come to the others. Have you made any studies or have you done anything to ascertain the facts as to whether or not down through the years such numbers of black people as they had in Harrison

County always voted anytime they pleased without any interference?

BY THE WITNESS: [134] No, I have not studied—

BY JUDGE COLEMAN: You haven't looked into that?

BY THE WITNESS: No.

BY JUDGE COLEMAN: What is the white population of Harrison County, total and black population? Have you got it, Judge Russell?

BY THE WITNESS: Someone has it handier than I do.

BY JUDGE COLEMAN: Yeah, Judge Russell may have it, he's got a document here in front of him.

BY JUDGE RUSSELL: The total of Harrison County?

BY JUDGE COLEMAN: Yes.

BY JUDGE RUSSELL: I don't have the ratio of black to white.

BY JUDGE COLEMAN: Well that's what we need.

BY JUDGE RUSSELL: Be 134,582.

BY MR. PARKER: There are 22,000 black—

[135] BY JUDGE COLEMAN: You have 134,000 what, total?

BY JUDGE RUSSELL: 582.

BY JUDGE COLEMAN: 582. And the blacks are 22,—

BY MR. PARKER: (Interrupting) 743.

BY JUDGE COLEMAN: Okay. Gentlemen, we will recess until 20 minutes until 2:00 o'clock and give us all one hour for lunch.

(Court recessed at 12:40 p.m., until 1:40 a.m., for lunch, May 7, 1975.)

(1:50 p.m., May 7, 1975, Witness Dr. Gordon Henderson returned to the Stand)

BY JUDGE COLEMAN: All right, Mr. Parker. You may proceed.

BY MR. PARKER:

Q. Dr. Henderson, would you please state to the Court your conclusions with regard to analysis of the

alignment of majority black counties with majority white counties in the senatorial districts of Senate Bill 2976?

A. The first conclusion is that many other districting [136] arrangements could have been found besides the one that was found for these black majority districts that would not have left black majority counties submerged in clearly white majority districts. And, secondly, many of these alternative districts would have been more compact, that is to say in some cases where the existing senate plan has a district consisting of three counties alternatives existed which would have combined only two. Where the existing plan has a district with two seats alternatives existed which would have created a district that had only one seat. And then finally, in every case counties can be combined, other arrangements in other words are possible, to create black majority districts which have variances less than the variances included under the existing plan. And I think with particular respect to the Senate the most notable finding could not have been predicted ahead of time was it of the 16 alternatives that can be divided into, I'm sorry, of the 19 alternative districts that can be devised to district 16, all of these have variances that are less than that provided in the Senate's plan.

Q. And what is the racial composition of those 19 alternative possibilities?

A. Black, black majority.

[137] Q. Now have you analyzed the House plan to determine whether the House plan, or House Bill Number 29, Number 1290, has any effect on black voting strength?

A. Yes, I have.

Q. And would you state what conclusions you have drawn and then after you have stated your conclusions would you state the basis on which these conclusions were made?

A. I performed with respect to the districts of the House the same kind of analysis that I performed with respect to the districts in the Senate, and essentially the conclusions are the same, to-wit: that many of the districting arrangements might have been chosen, all of

which would have avoided submerging black majority districts into clearly white majority districts, many of these districts would be more compact, and combinations of counties into districts can be found alternatives which have lower variances than the Senate's plan and are also black majority.

Q. Now what House districts do you believe dilute black voting strength?

A. The list by number—

Q. Yes.

A. —is District 3, 9, 23, 24, 28, 30, and 37.

Q. Now if the norm for a house district is 18,171, can [138] you tell me whether or not Marshall County exceeds the norm?

A. You're talking about the House now, correct?

Q. The House side.

A. Yes, sir.

Q. Marshall County.

A. Right. With a total population of 24,027 it does.

Q. And what is the racial composition of Marshall County?

A. It's roughly 62 percent black, 14,891.

Q. And with what county is Marshall combined in House District 3?

A. DeSoto.

Q. And what is the racial composition of DeSoto?

A. It's a majority white.

Q. And how many whites does it have?

A. Approximately 23,200.

Q. What is the effect of combining Marshall County with a 62 percent black majority with DeSoto County which is a predominately white county with over 23,000 whites?

A. It produces a district that is approximately 46 percent black.

Q. Which means?

A. That it's a white majority district.

Q. And what is the effect on black voting strength in [139] Marshall County with this combination?

A. It dilutes it.

Q. And this House District 3 has how many seats and what is the variance?

A. Three seats and the variance is 9.90.

Q. Could Marshall County, a black majority county, have been combined with other counties to create a black majority district in population; if so, how many possible alternatives would there be?

A. There are a total number of 117 districts, all of which have a variance within the range of the House plan, and of these 117 possible districts 10 of them would be districts with a majority black population.

Q. Can you give us an example of that?

A. Marshall, Benton and Tate would prove to be a black majority district, 53.51 percent black, also with three seats and a variance of minus 8.13.

Q. Can you tell us with respect to House District 9 whether Panola County exceeds the norm for a House District?

A. Panola County with a total population of 26,829 does exceed the norm.

Q. And is Panola a black majority county as well?

A. Yes, it is.

Q. And in House District 9 with what county is Panola [140] combined?

A. With Yalobusha.

Q. What is the effect of combining Panola County with Yalobusha County?

A. It produces a white majority district.

Q. And what is the effect on black voting strength in Panola County of combining Panola with Yalobusha?

A. It dilutes it.

Q. And what is the variance?

A. With two seats the variance is 6.61.

Q. Are there alternative possibilities of combining Panola with other counties that would not put Panola in a white majority district but would in fact put Panola in a black majority district?

A. Panola as it happens is a rather good example. Panola County can be placed, combined with other counties, in a total of 174 different districts of which

52 would be districts with a majority of black population.

BY JUDGE COLEMAN: All right, sir. Now I want to break in at this point just because I'm somewhat confused by this line of testimony. I want to see if I can straighten it out. You say it could have been put in 174 different districts?

BY THE WITNESS: [141] That's correct, Your Honor.

BY JUDGE COLEMAN: All right, I want you to give us a list of the 174 districts that it could be put in, because obviously it doesn't join but about three or four other counties and I don't know how that can be parlayed into 174 different districts.

BY THE WITNESS: The second computer program that I spoke of this morning Your Honor, produces these two sets of print outs which run hundreds of pages, one is for the house and one is for the senate, and I can very easily xerox that portion of it dealing with Panola and all possible combinations with other counties up to a maximum of three others, and the possible combinations of counties up to a maximum of four in the case of a county like Panola will run hundreds of possibilities of which only if I may 174 of the several hundred possibilities are have a variance of less than that provided in the house plan.

BY JUDGE RUSSELL: But you haven't answered his question yet with only two or three counties adjoining how could you get that many?

BY THE WITNESS: Well, let me designate counties as A, B, C and D.

[142] BY JUDGE COLEMAN: No, we have got a case here dealing with real lives and with real counties, and they are on the map in an immovable location. We have got to deal with them as they are and what concerns me about all this is when you move one you have got to move every other county in the state to try to stay within the norm. You can't just move one of them in isolation. When you move Panola County say into 174 other possibilities, which I don't understand yet, but I hope I will when you finish, by the same token

then you have interfered with the arrangement of all the other districts in the state. If there are 174, you say there are 174 possibilities for a combination of Panola County then if you move it and you take 81 other counties and multiply that by 174 you have then committed approximately 13,000 disturbances, or at least you have, this business of dividing the state by computer on a pure mathematical basis ignoring every other facet that the lawmaker has to consider and is entitled to consider somewhat baffles me. We know that Panola County, for example, joins Tate on the south doesn't it, and it adjoins Lafayette on the west, Quitman on the east, and then I guess it adjoins Yalobusha on the south and Tallahatchie, so we know about you can only move it so far until [143] you are going to gobble up the 18,000 people that constitutes a norm, so I am totally at sea about how you come up with all of these say 174 variations and that's without breaking county lines isn't it?

BY THE WITNESS: Oh absolutely.

BY JUDGE COLEMAN: Well that's the reason I would just like to see what those 174 combinations would be.

BY MR. PARKER:

Q. Can you read them off?

BY JUDGE COLEMAN: I don't care if you read them out but if you would just find the place and hand it up to me on the bench I could look at it. I would be glad for you to read them out but it would just take a long time, just let me see what it looks like.

BY THE WITNESS: May I bring this up so that I can point it out to you?

BY JUDGE COLEMAN: Well, just point it out to the Clerk there and let him show me will be all right. If he cannot well then I will ask you to come up.

(Witness mumbling to Deputy Marshal and Court Reporter unable to understand the record.)

[144] BY JUDGE COLEMAN: I am beginning to understand now. You are talking about the possibilities

if you were to create district with as many as what, four seats?

BY THE WITNESS: That's correct.

BY JUDGE COLEMAN: That this county would be included in?

BY THE WITNESS: That's correct. In all cases I'm talking about combinations up to a maximum of four.

BY JUDGE COLEMAN: Yeah, well that's what I see now. In other words, you're talking about, say your first possibility here about Panola would be to combine it with Lafayette and give them three seats, or with Quitman give them two, or with Tallahatchie give them three, or with Tate give them two, or with Tunica two, Yalobusha with two and then you drop back to Lafayette and Quitman with four, Lafayette and Tallahatchie with four seats. That's somewhat at war with your idea that one seat is the ideal, isn't it?

BY THE WITNESS: Yes, we're back to talking about numbers again—

[145] BY JUDGE COLEMAN: Yes, yes, this is sort of a numbers game.

BY MR. PARKER:

Q. How many seats in House District Number 9 under House Bill 1290?

A. Two.

Q. How many alternative possibilities are there for combining Panola County with other counties that would result in black majority population districts?

A. 52.

Q. Can you give us an example?

A. Panola with Tunica.

Q. What would the racial composition and the variance be?

A. 57.82 percent black with two seats and a variance of 6.44.

Q. Okay, District 23, would you name the counties in District 23?

A. Presently Lowndes, Noxubee and Oktibbeha.

Q. Do any of those counties have a black majority population?

A. Noxubee.

Q. By what percentage?

A. 66 percent.

Q. And what is the racial composition of House District [146] 23?

A. It is white majority.

Q. And what percent black?

A. 38 percent black.

Q. What is the effect on black voting strength in Noxubee County of combining Noxubee with Lowndes and Oktibbeha?

A. It dilutes it.

Q. And how many beats are in that district?

A. Five.

Q. Are there any combinations—

BY JUDGE COLEMAN: May I ask you how does it dilute it, I would like to explore this a little, this county could not elect, it doesn't have enough population for one representative on its own?

BY THE WITNESS: Noxubee County—

BY JUDGE COLEMAN: Noxubee County just doesn't have enough people for one representative?

BY THE WITNESS: No, it has—

BY JUDGE COLEMAN: So it's got to be combined with somebody?

[147] BY THE WITNESS: Yes.

BY JUDGE COLEMAN: And it's on the Alabama line and that limits at least your opportunities to spread to the east. By diluting it, these people couldn't elect a representative on their own in any event so what do you really mean when you say that there vote is diluted when they happen to be combined with two other counties?

BY THE WITNESS: It dilutes it in two ways. First it dilutes it because there is the possibility of a combination which would produce a black majority district and to the extent that that has not been done that vote has been diluted.

BY JUDGE COLEMAN: How much dilution would take place say on your first alternative? How much dilution would that save?

BY THE WITNESS: I'm sorry, Your Honor, I don't think I understand.

BY JUDGE COLEMAN: Well that's a problem about taking the solely mathematic approach to this thing. What was your first alternative for this district for Noxubee County, where would you have placed it?

[148] BY THE WITNESS: It can be placed in Noxubee, Winston, Attala and Holmes.

BY JUDGE COLEMAN: Noxubee, Winston, Attala and Holmes. That would give you a district over a hundred miles, wouldn't it?

BY THE WITNESS: Yes, it would.

BY JUDGE COLEMAN: And it would wind up with how many representatives?

BY THE WITNESS: Four.

BY JUDGE COLEMAN: Four. And they would all be elected from that area? You would have to elect them district at large to maintain your ratio?

BY THE WITNESS: I don't see why, Your Honor—oh, I'm sorry, I think I understand. You're assuming that we're still not talking about breaking any county boundaries?

BY JUDGE COLEMAN: That's right. They would have to be elected at large?

BY THE WITNESS: [149] Yes.

BY JUDGE COLEMAN: So if some black citizen of Noxubee County wanted to run for the legislature for example in that district, instead of campaigning in the nearby counties of Oktibbeha and Lowndes he would have to go all the way through Winston which has a width of, I believe it's 36 miles, and all the way across Attala which has another 36, 72 miles, and then he would get into Holmes which reaches still another 36 miles over into the Delta around Tchula. So he would be campaigning over a territory a hundred miles wide, wouldn't he?

BY THE WITNESS: Unless of course he decided that he could gather enough support around his home-town—

BY JUDGE COLEMAN: Well he obviously couldn't do it in Noxubee County, could he, because they don't have the people.

BY THE WITNESS: He could not do it in Noxubee.

BY JUDGE COLEMAN: He would have to go to Winston, Attala and Holmes. Proceed.

BY MR. PARKER: Point out to the Court in Senate Bill 2976 there are [150] districts at least that large and possibly larger, more than a hundred miles long.

BY JUDGE COLEMAN: How many members, how many senatorial?

BY MR. PARKER: Two or three.

BY JUDGE COLEMAN: But you're dealing with a norm there of 40,000 where here we're talking about 18.

BY MR. PARKER: That's right. Single member districts would provide smaller districts for both the House and the Senate.

BY JUDGE COLEMAN: Well we can understand all that.

BY JUDGE RUSSELL: And if you took in Holmes in that District 23 you would be taking Holmes out of District 16 which is with Humphreys and you have the only black legislator from that county now, don't you?

BY MR. PARKER: Right.

Q. For House District 28, Dr. Henderson, what is the population of Madison County, is Madison County above or below the norm?

A. Madison County with 29,737 is above the norm. [151] Q. And what is the percentage of black in that county?

A. 62 percent.

Q. And Madison County is combined with what county in a floaterial district?

A. Rankin.

Q. I believe one is elected by Madison, two is elected by Rankin and one is elected at large, is that your recollection?

A. I think it is my recollection, yes.

Q. And that district for the at large seat, is that a black majority district or a white majority district?

A. As is now?

Q. Yes.

A. White.

Q. What is the effect of combining Madison, a black majority county with Rankin, what is the effect on black voting strength in Madison?

A. Once again, it dilutes it.

Q. Are there any alternatives combining Madison and Rankin that would not dilute the black voting strength?

A. It is possible to incorporate Madison County in 28 districts that are black majority.

Q. Could you give us an example of one?

A. Madison, Yazoo would be 58 percent black, it would [152] have three seats and the variance would be 4.63.

Q. Now let's take House District 30, what counties are included in House District 30?

A. At the moment, excuse me, Claiborne and Warren.

Q. And Claiborne is 74.57 percent black, is that right?

A. That's my figure.

Q. Okay. And is the district a white majority or a black majority district?

A. White.

Q. Isn't it common knowledge that Claiborne County has black elected officials at the county level in Claiborne County?

A. It's common knowledge to me.

Q. And this is a white district wide majority, is that right?

A. Yes, it is.

Q. And are there any alternatives to combining Claiborne with any other county that would provide a black majority district?

A. There are 12 such possibilities.

Q. Could you give us an example of one?

A. Claiborne and Jefferson would be 74.90 percent black, it would have one seat and the variance would be 6.65.

[153] Q. And how many seats is the House District 30 under House Bill 1290 combining Claiborne and Warren?

A. Three.

Q. Now according to the United States Census Warren has 18,355 black people. Is it your understanding that is above the norm for a House district?

BY JUDGE COLEMAN: I beg your pardon, what district is it you're talking about now.

BY MR. PARKER:

Q. Well, Warren County standing alone has a black majority, has a black population, it's a white majority county with a black population of 18,355. Now as I understand your testimony, Claiborne and Warren together, House District 30, is 46, 47 percent black or racial composition, is that correct?

A. That's correct.

Q. Which means that it is a white majority district?

A. That's correct.

Q. And voting is county wide?

A. Correct.

Q. Now what is the effect upon the voting strength of those 18,355 black people in Warren County when you have at large county wide voting in House District 30?

[154] A. In this instance it dilutes the voting strength of blacks whose numbers entitle them to representation by the equivalent of one district, because their number exceeds that of the norm.

Q. Now in Hinds County there are 84,—

BY JUDGE RUSSELL: While he's on Warren and Claiborne there let me ask this. In other words you have 10,086 population in Claiborne. Now how much of that is black in Claiborne?

BY MR. PARKER: 7,522.

BY JUDGE RUSSELL: All right, they have 7,000 up there as against Warren County, and you say it's 18,000 blacks in Warren County?

BY MR. PARKER: 18,355.

BY JUDGE RUSSELL: Yes, 18,355. So that would leave almost 25,000 whites. In adding them up I don't know what it is in percentages but it looks like it would be fairly well equal there, because you've got 7,000 plus in Claiborne of blacks and you've got about 6,000 plus in Warren of white.

BY MR. PARKER: [155] The overall district, Your Honor, would be whites, 29,010, blacks, 25,877, and others, 180, for a total population of 55,067. The district would be 46.99 percent black.

BY JUDGE RUSSELL: 46 what?

BY MR. PARKER: .99. 47 percent black.

BY MR. RUSSELL: What's the difference in people there?

BY MR. PARKER: The difference in people is 4,867.

BY JUDGE RUSSELL: In favor of what?

BY MR. PARKER: In favor of whites.

BY JUDGE COLEMAN: Do you have something, Mr.?

BY MR. SUMMER: Yes, if the Court please, I would like to, maybe not make a specific objection, but in the manner and method to which this has gotten into, the gentleman just stated that a particular population entitled them as a matter of right to a black representative, and I wanted to clarify myself to the fact that we're not [156] dealing with that issue and for the record we are dealing with possible alternative plans rather than anybody's right to a seat in the legislature because of his color.

BY JUDGE COLEMAN: Well, I think that the—

BY MR. SUMMER: (Interrupting) He has just made a very—

BY JUDGE COLEMAN: (Continuing) the Court understands that. I think what he meant was theoretically if all blacks voted for blacks and all whites for whites that they would be entitled, that that would give them one on that basis—

BY MR. SUMMER: (Interrupting) Just like the Court—

BY JUDGE COLEMAN: (Continuing) I like his method of examining district by district because that's what we've got to look at when we're through, it may take a little time. If he misstates a conclusion of law, why he may not do more than we will later do when the Supreme Court gets through with it, but we understand your point.

BY MR. SUMMER: Thank you.

[157] BY JUDGE COLEMAN: Go ahead, Mr. Parker.

BY MR. PARKER:

Q. Now Hinds County has 84,064 black persons residing in Hinds County.

BY JUDGE COLEMAN: Is that a new district number?

BY MR. PARKER: Hinds County?

BY JUDGE COLEMAN: Hinds County, what district number is Hinds County? Okay, 31 is Hinds County.

BY MR. PARKER: District 31.

BY JUDGE COLEMAN: Okay.

BY MR. PARKER:

Q. House Bill 1290 provides for two by supervisors district, two at large. Hinds County is 61 percent black, sorry, 61 percent white. What is the effect of at large county wide voting on two at large seats. What effect does that have on this substantial black voting strength in Hinds County?

A. In my best judgment it serves once again to cancel out this voting strength.

[158] Q. Now Harrison County is 22,743 black people and that is more than the norm, is that correct?

A. It is.

Q. And Harrison County District 45 has one by supervisors district and two at large. What is the effect of at large county wide voting in Harrison County which has a white county wide population majority, what is the effect of county wide voting on the voting strength

of those 22,000 black people who live in Harrison County?

A. Once again the at large electoral system serves to cancel out this voting strength.

BY JUDGE RUSSELL: Well wouldn't it make a difference if they were concentrated in one area because if they're scattered throughout the county, as I know them to be, how does that dilute their vote because if you put it in any single member district how would that if they are fairly well equalized throughout the county, how would that dilute it by making it county large, it would actually give them the bargaining, the balance of power, and that's what they have. Just had a city election there and one black out of eight whites ran in the city of Gulfport, black came in third, but there was no concentration of votes there.

[159] BY THE WITNESS: Judge Russell, with all due respect I am afraid I disagree just about 98 percent. I'm afraid the point is that it doesn't give them bargaining power, that if they are districted, if they are concentrated, if it can be drawn in some fashion—

BY JUDGE RUSSELL: If they are not concentrated.

BY THE WITNESS: If they are not concentrated.

BY JUDGE RUSSELL: That's what I'm talking about.

BY THE WITNESS: Right. It is the at large principle that makes the difference. It is that they have more than one vote to cast and if blacks are going to group together and cast their vote, say for the black candidate that they agree on and they all vote for him, they still have to cast that second ballot and my studies of three elections in great detail in Hinds County which really is the county where they have census data that enables us to make this, I think absolutely conclusive demonstration, it indicates that that second ballot is wasted and served to elect a white candidate and because the ballot is expended in this fashion. In [160] Jackson what has happened is that the black candidate has invariably come in one or two positions behind where he could be elected, say to the City Commissioner. It's

the number of ballots and the need to cast a ballot and the wasting of the ballot that minimizes almost to nothing that bargaining power. It's the ability to build a coalition and exercise effective power that makes it exceedingly different to find racial discrimination in voting in many northern cities where indeed they are a balance of power and politicians know it. But people can look at the city of Jackson in '71, '72, and '73 and say they can be safely ignored. There's no way that they can elect James Meredith, there is the record.

BY JUDGE RUSSELL: Of course if you've got two black areas, say in the Board of Supervisors redistricting, you've got two predominately black areas, how do you say that they could not elect a black in those areas?

BY THE WITNESS: You mean in Hinds County under the decision?

BY JUDGE RUSSELL: Yes, sir.

BY THE WITNESS: There are two, as we have been using the words here [161] today, two majority, black majority districts under Judge Nixon's decision. And if that is a reality then in fact, because they are concentrated enough to make this difference, they will elect blacks.

BY JUDGE RUSSELL: Wouldn't they have a chance to elect four?

BY THE WITNESS: Four.

BY JUDGE RUSSELL: Four members of the legislature in those two districts if they are concentrated and run at large from that county, from the district?

BY THE WITNESS: But there are two running at large from the county.

BY JUDGE COLEMAN: Well, you have to, you've got two districts out of five in which you do have a black majority.

BY THE WITNESS: Correct.

BY JUDGE COLEMAN: Now then, what is the ratio of black to white in the county as a whole, what is it, 60 40?

BY THE WITNESS: Close enough.

BY JUDGE COLEMAN: [162] All right. Well you've got 40 percent of the districts here in which you've got a black majority too, haven't you, in Hinds County?

BY THE WITNESS: No Answer.

BY JUDGE COLEMAN: You've got two out of five is what I'm saying.

BY THE WITNESS: Two out of five, yes, we do.

BY JUDGE COLEMAN: And of course you've got two at large which is going to be subject to the vote of the whole county. Do you think that the whole county, the entire county, should be deprived of representation as such and it should be broken up into a bunch of balking districts just to try to obtain some kind of racial majority?

BY THE WITNESS: In order to give effective representation, yes, I do.

BY JUDGE COLEMAN: You think so?

BY THE WITNESS: Yes, sir.

BY JUDGE COLEMAN: All right.

[163] BY MR. PARKER:

Q. Dr. Henderson, in your view, and you have studied those Hinds County Districts, in your view is it possible for black voters in any of the five districts as determined by the Board of Supervisors Redistricting Plan, is it possible and likely that black voters can elect legislators or county officials of their choice in any of those five districts?

A. My best guess at that this moment is that they cannot.

BY JUDGE COLEMAN: And for what reason since they are in the majority?

BY THE WITNESS: Because we have very carefully used the majority districts here today in the sense of total population figures regardless of age, and my calculations for Hinds County indicates that in one of those black majority districts in Hinds County the voting age population is approximately 46.2,—

BY MR. PARKER: (Interrupting) 46.2 what?

BY THE WITNESS: Percent, I'm sorry, and that's substantially below 50, and considering also the status of voter registration among blacks and the very substantially higher rate of registration among whites. I'm

not usually a [164] betting man, but I think I might make a few bets on that outcome.

BY JUDGE COLEMAN: Do you take the position that reapportionment has to be extended not only beyond equality of population but equality of those who choose to register and vote or those who are able to register and vote and we find we must go to voting strength to take care of this situation?

BY THE WITNESS: No, I don't, not at all. What I'm saying here is that from what political scientists, going back, extensive studies going back to 1944, believe is one of the best established of all principles is that people will vote when they believe their vote will count, and that low registration indicates that blacks can read the record of recent elections as well as any person and that is why registration is low; that in fact, if this Court made the possibility that their vote would count in reality that indeed registration would increase substantially as it did in 1971 when apparently blacks believed that they had a chance to have an impact on the outcome of an election, so I'm 100 percent in agreement that we ought not—

BY JUDGE COLEMAN: [165] Well since you are a political scientist of great study I see and so forth, I'm talking about 1971 as I recall it just in a general way, we had a black candidate for governor in Mississippi in '71, didn't we?

THE WITNESS: Yes.

JUDGE COLEMAN: And he lacked about 100,000 votes getting as many votes as there were black people voting, isn't that so?

THE WITNESS: No Answer.

JUDGE COLEMAN: According to all the reports and figures of the time? I'm talking about—

THE WITNESS: (Interrupting) No, it does not—

JUDGE COLEMAN: (Continuing) What I'm talking about is we take a premise as if it were the law of the medes and persians and then we try to build everything on that premise. But obviously according to the statistics, if you would look at them and I'm sure you have because I don't see how you could possibly have over-

[166] looked them, in the governor's race of 1971 there was just plenty of black people who did not vote for the black candidate for governor. Have you looked at that?

BY THE WITNESS: I would not call it plenty, no, sir.

BY JUDGE COLEMAN: What would you call it?

BY THE WITNESS: I would say—

BY JUDGE COLEMAN: According to the records of black registration and black voting in Mississippi how many blacks were there in November who did not vote for the black candidate for governor?

BY THE WITNESS: I would have to look up my figures, but it was not a significant percentage.

BY JUDGE COLEMAN: It was as many as 100,000, wasn't it?

BY THE WITNESS: That's not my recollection at all, Judge Coleman.

BY JUDGE COLEMAN: Well I'll be glad for you to supplement the record on that.

BY THE WITNESS: [167] All right.

BY JUDGE COLEMAN: I'm just pointing out that these, if you, if anyone, I or anybody else, was allowed to establish the premise from which he reasons you can prove anything. But then of course what we have got to look at is the validity of the premise, and it's an amazing thing to me that although we are trying here to establish districts with black majority you say where it has been done it's nevertheless useless. This is a very, very bizarre thing. We're talking about how we ought to establish these black majority districts for the legislature, we've got to establish by Federal Court Order, and yet you say no black can be elected in either one of them. Now this makes me think I'm wasting my time and I ought to be home looking at television. What good is it going to do us to establish a black majority district if blacks can't be elected in them?

BY THE WITNESS: Would you like an answer?

BY JUDGE COLEMAN: Yes, sir, I would like to have your comment on it because this makes me feel like I'm in a labyrinth of some kind.

[168] BY THE WITNESS: I don't want to be a Polyana about this, but I think you can leave an imprint if, to concede that we're talking from premises, if I as a political scientist am correct in what I've said about the motivations of black or white and why they fail to register or do. For this Court to create some black districts so that blacks would see that indeed there were more a reality more than a token member of the legislature it should make a tremendous difference and then perhaps what I have said about the second district and fifth district under Judge Nixon's plan in Hinds I would have to retract four years from now.

BY MR. PARKER:

Q. What are the measure of black voting strength, Dr. Henderson, is pure raw population figures, are those the measures, proper measures of black voting strength?

A. No answer.

Q. What other statistics can we use to actually measure black voting strength?

A. I hope I understand the question. One can certainly look at voter registration as a measure of strength, one can certainly look at voting age, that is to say people 18 years and older, those are two clear [169] possibilities.

Q. Okay, are blacks in the voting age population majority or registered majority in any of the Hinds County Supervisory Districts under the Board's plan?

A. No.

Q. Now Lauderdale County, Dr. Henderson, is in District Number 24 under House Bill 1290. Lauderdale County according to census statistics has 20,630 black people. I understand that to be above the norm, is that correct?

A. That's correct.

Q. Now Lauderdale and Kemper combine together in a floaterial district and three representatives are elected district wide and must be residents of Lauderdale and one representative is a resident of Kemper and elected district wide. What is the effect on black voting strength, 20,630 black people in Lauderdale County, what is the

effect on them of district wide elections in House District Number 24?

A. Again as elsewhere at this time a district wide election serves to dilute that strength.

Q. On the basis of what you have found does the legislature's plan constitute an honest and good faith effort in your view to provide the maximum equality [170] of population among the districts?

A. I do not believe it does.

Q. Now have you written two memoranda reflecting and describing your analysis of the dilution of black voting strength in the House Plan and the Senate Plan?

A. I have.

Q. May I see, would you hand me please the memorandum on the Senate Plan, Senate Bill Number 2976.

BY MR. PARKER: Ask that it be admitted in evidence, Your Honor.

BY JUDGE COLEMAN: Let the other side see it if they have not seen it.

BY MR. PARKER: I'm sorry. This is simply a description of Dr. Henderson's analysis, Your Honor.

BY MR. SUMMER: Court please, we would object to it primarily on the fact that he has already just testified to it in open Court what his analysis was, and we see no need to supplement the record for it.

BY JUDGE COLEMAN: Well, we'll reserve ruling on it, hand it up and let the Court look at it and we will place it on you to call it to our attention before the evidence is closed and we'll see whether—

[171] BY MR. PARKER: I'm sorry, I didn't hear you.

BY JUDGE COLEMAN: I said we'll put it on you to remind us before the evidence is closed to rule on it, I'll reserve ruling now until we can see what's in it, I haven't seen it. The other Judges haven't. You may proceed.

BY MR. PARKER:

Q. The same with House Bill, your description with House Plan Number 1290. Would you hand that up to the Court, please, as well, Dr. Henderson.

BY JUDGE COLEMAN: This deals now with the Senate.

BY MR. PARKER: The first one is the Senate, the second one is the House Plan, Your Honor. This is Dr. Henderson's analysis of the effect of these two plans on black voting strength.

BY JUDGE COLEMAN: Ruling on that will be reserved as to its admissibility.

BY MR. PARKER: May we have them marked for identification?

BY JUDGE COLEMAN: Yes, you certainly can.

(Received and marked as Exhibit P-28 for identification.)

[172] (Received and marked as Exhibit P-29 for identification.)

BY MR. PARKER: And would the Clerk please give us the numbers of those exhibits so we can remind the Court?

BY DEPUTY CLERK: P-28 for the Senate and P-29 House.

BY JUDGE COLEMAN: P-28 Senate and P-29 House, ruling reserved.

BY MR. PARKER: Do you have an extra copy of the Senate Plan?

BY THE WITNESS: I have my own.

BY MR. PARKER: Are there marks on that at all?

BY JUDGE COLEMAN: Judge Cox just wants it for the purpose of looking at it is all, so he can see what's on it.

BY MR. PARKER:

Q. Now based on your analysis of the effect of these two plans, House Bill 1290 and Senate Bill 2976 on black voting strength in Mississippi, Dr. Henderson, can you tell us whether or not in your view these two pieces of legislation, House Bill 1290 and Senate Bill 2976, constitute a racial gerrymander?

A. In my best judgment they do.

[173] BY MR. PARKER: No further questions, Your Honor.

BY JUDGE COLEMAN: All right, you may cross-examine.

CROSS-EXAMINATION

BY MR. ALLAIN:

Q. Dr. Henderson, I'll basically discuss some of the, of your political theories rather than the redistricting in which the Court has pretty well gone into. If I understand your testimony and from your deposition and your other testimony, you are saying that when you use purely population figures of black and white that that doesn't reflect the number of voters because one, the number of individuals that fall within the voting age category that the black percentage is lower than the whites, is that correct?

A. In many instances in Mississippi, yes.

Q. Would that be throughout the state?

A. Throughout the state.

Q. And then all those that fall into the voting age group you say that the percentage of blacks that actually register are lower than the percentage of the whites, is that correct?

A. Substantially lower.

Q. And then are the number of blacks who do register, the [174] percentage of blacks who actually exercise the right to vote is less percentage-wise than the whites, is that your testimony?

A. Yes.

Q. Then would you give us your estimate of what would be the necessary percentage of the population now I'm talking about, population of the blacks to the whites in order to call it, say a safe district, or a district in which you as a political scientist could say there was a probability of electing black candidates assuming the blacks did vote in the same pattern they are voting?

A. I would like to look at it on an individual county and/or city basis and depending upon that my estimate for the particular locality would probably fall somewhere between 54 and 65.

Q. Between 54 and 65.

A. 54 and 65. In my judgment it can be lower in urban areas than it can in rural areas. This is just projecting the future, if you will, on the basis of the record of the past.

Q. Now when you developed hundreds of plans in which you said that they could, the legislature could have combined a black county let's say with a white county and created a district in which the probability of a [175] black being elected, did you take these figures into consideration, 54 to 65?

A. No, I did not. In these plans for this hearing today I concerned myself solely with black majority counties. Even if that majority had only been, as it never was, but even if it had only been of one-half of one percent I would still have called that a black majority county.

Q. That would not have fit into your criterion that it must be between 54 and 65 percent of the population figures in order to be called a safe or a probability of a safe district for a black candidate?

A. That's correct, I was not trying to identify safe districts.

Q. Do you know how many districts in which you identified today that would fall into this particular category?

A. Unfortunately I do not. I must in all candor confess that I didn't do this analysis until bright and early Sunday morning and there are many things I wish I had done but I didn't, and that was one.

Q. And many of the plans which you say the legislature could have come up with in which they had joined blacks with whites population-wise would not necessarily be a district in which a black would have any chance anyway, under your theory?

A. By my definition of the probability, yes, sir, that's [176] correct.

Q. Do you know how many blacks were registered to vote on November 2, 1971?

A. No, I do not have that figure.

Q. Do you have any figures in regard to registration?

A. I have extensive figures with respect to Hinds County only.

Q. You have none for the state as a whole?

A. The only figures I ever have for registration for the state on the whole are not products of my own work.

Q. Do you have, where did you get these particular figures you're speaking of?

A. Testaments are made from time to time by the, principally by the Institute of Politics at Millsaps.

Q. What was the figure that they gave for the state as a whole, do you know?

A. I'm sorry, I don't remember.

Q. Sir, drawing upon your expertise as a political scientist, in November 2, 1971 Charles Evers, a black candidate for governor, got 172,762 votes statewide. Another black candidate, Freddy Washington running for Secretary of State, got only 100,816. Do you have any theory on why Charles Evers was able to get 72,000 votes more than another black running for statewide office?

[177] A. Yes, he was more visible and he was running for a higher office.

Q. You know there's 72,000 votes difference?

A. Yes.

Q. And that's the only reason you say that there's, that Charles Evers was more visible?

A. And he was running for a higher office.

Q. You don't consider the Secretary of State's office a high office, it's a state office, isn't it?

A. I said higher, comparative, a higher office.

Q. Can you tell us why then for the Superintendent of Public Education C. J. Duckworth, who was quite well identified throughout the State of Mississippi being head of the Teachers' Association, only got 128,732 in comparison to 172 for Charles Evers?

A. No Answer.

Q. Do you know why, do you have any idea why that that discrepancy—

A. (Interrupting) I can make another estimate again.

Q. Would that be—
A. (Interrupting) I can—I'm sorry.
Q. Go ahead.
A. I have a little difficulty accepting your description of him as well-known because he's the head of the Teachers' Association, but apart from that my answers [178] with respect to the same, somebody who is as visible and has not, it was not Medger Duckworth that was killed, it was Medger Evers, and the office that he was running for his brother was the office of governor and this is not something distinctive to Mississippi, the office of governor characteristically attracts more voters to it than lesser offices.
Q. Now you say you made quite a study of the voting in Hinds County in 1971?
A. Yes.
Q. Did you analyze the fact that Charles Evers just got 18,402 votes in Hinds County in '71, that Freddy Washington got only 13,453, and that Duckworth got 17,051, did you analyze the discrepancy between the votes there although all three were black candidates?
A. I didn't feel a need to analyze the discrepancy for the reason I think that I have given.
Q. Well on your theory that blacks voted for blacks and white people vote for whites, when a individual went to the polls and cast a vote for Charles Evers what would keep them from going just about one or two spaces down and also casting a vote for another black candidate?
A. My analysis and what I said here this afternoon began [179] with the premise which I said was the most, one of the most best established propositions for the voting behavior studies in this country, that people will vote when they believe or where they believe their vote will count. And the very fact that Charles Evers ran so far ahead of any other black candidate that year or since is an indication that blacks felt that in voting for him they could make an impact that they apparently didn't feel they could have in voting for Superintendent of Education or any other office.

Q. Now Doctor it wasn't a case of them having to get up and leaving their television set and going to vote, they were in a booth and they marked up there Charles Evers, it didn't take much effort to go right a little bit further down and mark for Freddy Washington and Duckworth, now how can you explain that on a science that regardless of where the man was going to win or lose that someone in a poll would not have cast that ballot for the other two individuals?
A. That is rational behavior for anyone who concentrates much of his effort as I do on voting studies. People regardless of the effort simply do not believe it makes a difference and it's perfectly rational not to even bother to go two spaces down to put an "X" by [180] Duckworth's name if you feel that basically it's not going to make a difference. That is perfectly rational.
Q. In other words you're saying these individuals you're talking about wouldn't make that little effort of dropping down one place and putting an "X"?
A. Well, you know you can take it the other way which is what I would do and say that certainly demonstrates how little they thought their vote would count that they wouldn't even make that little effort.
Q. Now sir you've talked about combining Madison County with other counties and you've talked about the fact that Madison County was predominately a black county, is that correct?
A. Yes.
Q. Did you study the statistics for the Secretary of State's office in 1971 where Freddy Washington, the black candidate, got 4,316 votes in Madison County and Heber Ladner got 5,538 votes and Charles Evers got 5,475 votes. In other words, the white candidate beat the black candidate in Madison County in 1971 although there were more blacks in that particular county, did you look into that?
A. I have used those figures in some analysis I've done, yes.
[181] Q. And what reason did you find that they did not vote for the black candidate in preference to the white candidate?

A. Well it is very difficult from census data to get at the kind of reasons that I am particularly interested in, but the reasons are those that I have been giving. People skip offices that they believe it doesn't pay to waste their time voting for.

Q. Is that the only reason you can give for the Madison County with a white candidate?

A. It is the general reason, obviously, that I'm going to give and it is of such crucial significance in voting behavior that I think it's adequate.

BY JUDGE COLEMAN: Well let's see now was there any skipping there, how many votes did Mr. Evers get in Madison County?

BY MR. ALLAIN: In Madison County Mr. Evers got 5,475.

BY JUDGE COLEMAN: All right, and how many did Mr. Ladner get?

BY MR. ALLAIN: Mr. Ladner got 5,538.

BY JUDGE COLEMAN: And Mr. Ladner got more votes for Secretary of State in a predominately black county than Mr. Evers got [182] running for the highly exposed office of governor?

BY MR. ALLAIN: That's right, Your Honor.

BY JUDGE COLEMAN: Now how do you explain that, Doctor?

BY THE WITNESS: Differentials in turnout.

BY JUDGE COLEMAN: No, they were all voting at the same time.

BY MR. ALLAIN: This election was held together.

BY JUDGE COLEMAN: The election was held on the same day at the same time same place at the same polls in November of 1971, I don't quite follow your logic there now.

BY THE WITNESS: May I ask—

BY JUDGE COLEMAN: Everybody went to the polls at once, Mr. Evers was a black candidate for governor, highly visible, well-known, got 5475 votes for governor. Mr. Ladner who has also been Secretary of State for about 20, I don't know, since 1948, got 5538 votes, and he was a white candidate with a black opponent, and the black opponent dropped back, how many did he get?

[183] BY MR. ALLAIN: The black opponent, Your Honor, got 4316.

BY JUDGE COLEMAN: 4316. So he was running 1100 votes behind Evers, 1200 votes behind Ladner, and I rather suspect that there is some grounds for believing that black people are like everybody else, they'll vote for who they please and they don't necessarily have to vote for a black man because he's got his name on the ticket.

BY THE WITNESS: Did you want me to—

BY JUDGE COLEMAN: I'm just making that comment. At least from the standpoint of this evidence I just wonder if you're not doing black people an injustice by saying that they just invariably vote for a black candidate whether they think he's a better candidate or not. Apparently 5538 people in Madison County in a predominately black county to the tune of 25 percent majority thought that Mr. Ladner was the better candidate for Secretary of State. They didn't skip anything, they voted, these are people who actually marked the ballot.

BY THE WITNESS: That is—

[184] BY JUDGE COLEMAN: I have grave doubts about a lot of this theorizing when it's put right down to the hard test of what people really do. I rather strongly suspected if I were to be a candidate for office, which I don't expect to be, that a lot of black people would vote for me and a lot of white people would vote against me, so that's what we come to with all of this theorizing.

BY MR. ALLAIN:

Q. Doctor, you spoke about identification a while ago, did you say Bolivar County was a predominately black county?

A. Did we talk about Bolivar at any point?

Q. Would you say it is now, right now? Bolivar and Sunflower Counties?

A. Bolivar and Sunflower are both black majority counties.

Q. Have you ever heard of Mrs. Fannie Lou Hamer?

A. Yes, I have.

Q. She's quite well-identified with the Civil Rights Movement, isn't she, both nationally and locally?

A. Yes, more so perhaps some years ago than now, but yes, I think you are essentially correct.

Q. Did you make any studies in regard to the fact that in 1971 when she ran against Senator Crook in Bolivar [185] County he got 6302 votes, she got 4843, and in Sunflower County he got 6,375 votes, she got only 2,925, did you make any analysis of that?

A. That was a state legislative race, correct?

Q. Right.

A. No, I did not look at the legislative races, not that one.

Q. Wouldn't that have been a pretty good race to look at since she was identified with the black movement and was an individual in that area that had carried the burden for so many years, she was known on the national scene, probably even more than Charles Evers probably.

A. It would have, I would of course have had to look at more data than merely the election returns.

Q. Let's get back to Hinds County again. Actually in 1971 one of the plaintiffs in this lawsuit, Mr. Kirksey, ran for the Senate, did he not?

A. In '71?

Q. Right.

A. I believe so.

Q. Do you remember what post he ran for?

A. No.

Q. If I was to tell you that he got, in running for Post Number 5 countywide, for the Senate he got 10,122 [186] votes, that running for Representative Post here in Hinds County Emma E. Sanders, a black, now this is the same, everybody would have been voting on the same ballot at that time, got 11,565 votes and Jack H. Young, Jr. running for Representative Post on the same ballot got 13,980 votes. Would you analyze why Mr. Kirksey who was a black and he's been identified with the redistricting suit here in Hinds County, I think he's a plaintiff in that, he is identified in this lawsuit, he's got an identification yet he ran 4,000 votes behind

Mr. Jack Young who is a black lawyer in Jackson. Did you make any analysis of that or why, the reason for it?

A. If I may make an estimate I would say that Jack Young I think has as well-known a name as Henry Kirksey any day, but I'm not offering that as the full explanation.

Q. The question was did you make any, you said you made detailed analysis of Hinds, did you make any analysis of this particular race?

A. No, I did not, not of that particular race.

Q. What races did you make an analysis of, just the governor's race?

A. The governor's race, the city commissioner's race of '73, and the presidential electors race of '72.

[187] Q. Sir, you commented earlier as to the Hinds County suit which is, Judge Nixon has already ruled on, and you said that it was your opinion that although two of the districts population-wise are predominately black, that it would be your opinion that they could not elect two black supervisors because of these other elements involved, is that your statement?

A. That was my opinion, yes.

Q. Then you said that if this Court was to create some areas in which the individual, the black individuals knew that they could elect a black candidate because of the population and this would give them, they would get out and no longer be apathetic and they would go and register and vote, is that correct?

A. I would say that what we know about voting studies would lead us to expect that that kind of development would begin.

Q. All right, sir. Now that Judge Nixon has so ruled and he has set up two, at least two districts were set up by the county themselves which were approved by the Federal Court, now that the blacks in Hinds County know this to be a fact will that not bring them out and bring them to the Circuit Clerk to register, they don't have to register but 30 days before August, so that between now and the first primary that there [188] will be a tremendous number of registered voters in those two districts

on the theory that now they know that the Court has approved it?

A. If in fact they believe that those are majority districts, yes, but that begins to get into a premise that I cannot under any circumstance accept.

Q. Well, sir,—

A. (Interrupting) I think the reality, you see much of this analysis goes back to one of the best known if indeed not the best known of all political scientists, the late V. O. Key, Jr., who taught at Harvard for many, many years, taught at Alabama and was out of Texas. And his statement was the people vote when and where they believe their vote will count, accompanied with a statement that voters are not fools, don't undersell them, their ability to perceive what the reality of the political situation is is never to be underestimated, and I am afraid that it is quite possible that in this case they will perceive accurately that their chances of electing black representatives and supervisors in Hinds County is not realistic and there will be no substantial change at all in voting registration.

BY JUDGE COLEMAN: Dr. Henderson, we know for a fact that they have elected [189] black officials in Claiborne County as you have pointed out, and that 66⅔ percent of all the people of Claiborne County are black. Have you made any study or any analysis to see what percentage of the qualified black could be qualified electors of that county have registered? They know they have got a two to one margin and that there just isn't anything standing in their way toward total control of the, of that county's affairs at the ballot box, and under those circumstances I wonder what percentage of them have in fact registered according to your investigation?

BY THE WITNESS: Judge Coleman, I wish I could investigate that, but the records are so sketchy and incomplete. For example, when they filed the returns with the Secretary of State's Office they only report them for five precincts for the entire county. We try to relate this to—

BY JUDGE COLEMAN: There are only five precincts in Claiborne County.

BY THE WITNESS: Well I know, but it's very hard to relate this back to social characteristics.

BY JUDGE COLEMAN: [190] Well I'm not talking about social characteristics. I am asking you for a flat mathematical figure and that's what you have been talking about here all day and I think you have done a wonderful job, and certainly in some respects you have. Now if we know that there are 5,000 people, black people eligible to vote in Claiborne County that are over 18 years of age, that's all they've got to be now, they don't have to own property, they don't have to do anything but just register, we've got say 5,000 people, we ought to know how many of them are registered and therefore we ought to know something about this theory of yours that people only register to vote when they think it will count, nobody ever knows how it's going to count until after the votes are counted. I voted for many a person and got beat and I've been defeated myself when I used to be in that arena, that didn't keep me from making an effort, so you don't even know how many black people are registered in Claiborne County?

BY THE WITNESS: I have in my records at home an estimate, I'm afraid a very crude estimate. From Claiborne County, regrettably, as far as figures I have had some difficulty getting them. I can add that, I have already agreed [191] to supply additional data, I can add that to it if you would like, I will be happy to do so.

BY JUDGE COLEMAN: All right, sir.

BY MR. ALLAIN:

Q. Sir, you're telling the Court now that even though the Federal Court has approved a redistricting plan for Hinds County which shows at least two of the districts have a population majority of blacks, that this would not in any way get the blacks to come in and register in any number knowing now that they do have a chance to elect two supervisors?

A. That would be my judgment because my opinion is that they will know that they do not have a realistic chance to elect a supervisor.

Q. Well now sir how do they know about all these other nuances about the voting age and the fact that you, the statistics that you come up with show that whites out vote blacks, wouldn't they look at, the average citizen look at the population and say here in District Number 2 we have 22,984 people and the whites only have 20,000, would that not to the average citizen mean that we've got a chance to elect someone else, to the average citizen, let's talk in practicalities.

[192] A. I hope you don't think I'm ducking the question, but I think the average citizen would never be aware of the figures that you have just cited.

Q. Well what figures are they going to be aware of?

A. I don't think it is a matter of figures, I think it's a matter of Kirksey talking to people and other blacks talking to people and I think it's a network of information and communication around the country that is going to leave a distinct impression that the Court went against them once again, I think that is the kind of network of communication we are seeing when we do voting studies.

BY JUDGE COLEMAN: The way I understand your testimony then, it's a futile and a useless act for us to set up districts with black majority, and if that is not what you're testifiyng to I want you to explain it to the Court.

BY THE WITNESS: It is most definitely not my testimony, Your Honors.

BY JUDGE COLEMAN: All right, now why isn't that so, I mean here we are, here's a county that's in the capitol of the state, certainly I doubt that you could point to another county in Mississippi any more progressive generally than Hinds or in which the black people in [193] general have any more privileges or protection than any other county in the State of Mississippi, one in which they have voted much longer as a general rule than they have in the other counties of the state, and you say that a majority, black majority in Hinds County is futile how can you say it wouldn't be anywhere else?

BY THE WITNESS: Well,—

BY JUDGE COLEMAN: Well I'm not agreeing with you now but I'm trying to get it, I don't think it will be, but I'm trying to get it to your logic and to see just how much dependence we can put in the testimony you are giving here today. That's sort of, it seems to me kind of an Alice in Wonderland kind of a deal. I think that when people are in the majority if they don't exercise their majority it's their own fault in a free society unless you're going to pass a law to put people in jail for not going to the polls like the bill that apparently Representative Clark introduced. I'm not asking you these questions to agree with you, I don't agree with you, but I'm asking the questions to see just how much weight we can give to anything else you have said here. Of course when your're testifying [194] about pure mathematics that speaks for itself. But, this is a most unusual kind of an argument it seems to me and I want you to have an opportunity to tell us what you mean by it. You are a PhD and you're talking to three men up here on this bench none of whom are.

BY THE WITNESS: Well, there are two things I think I might say very simply. The first is that there are black majority districts and there are black majority districts and we have been talking today or at least I have, of black majority districts in terms of total population regardless of age as any district or any county that has a 50 plus percent black population. But I think if this Court were to create a district, accept a reapportionment plan that had a district with a black majority of say 60 percent, I think clearly that blacks would readily perceive that their vote was going to count even though their turnout rates were lower. And then secondly I think the crucial thing about Hinds County, indeed I hope you are correct, I hope I am dead wrong about that, but I in all honesty do not believe I am because when you have a district as I think it's number 2 in Hinds County that has only 46.2 percent, I think it is, black, that [195] is too far shy in a voting age population, too far shy of 50 to realistically expect that there are any blacks going to be elected from that district.

BY JUDGE COLEMAN: Well, now the Court wasn't under a duty to guarantee that anybody would be elected because he's black, he was just under a duty to see to it that a black was not put to an unfair disadvantage. Isn't that right?

BY THE WITNESS: That's right, and you see my study that we've been talking about for almost two hours before and after lunch indicates that there are many alternatives which the legislature might have chosen which would have had a smaller variance, been more compact, and had a solid black majority.

BY JUDGE RUSSELL: Under stating that's true you said there would be a smaller variance but you're saying now that you've got to have at least 60 percent black to even be elected. Now how do you get around that?

BY THE WITNESS: I didn't say 60, I said 60 would be comfortable. My figure in answer to cross-examination was 54 to 65 was my best guess. But in addition to that I [196] said that any movement that can leave an impression that a reapportionment plan is attempting not to be unfair to blacks is going to make a difference because the message will communicate itself that blacks are going to be able to make a difference because their votes will count. And so some, let us say, followed black majority districts I think required and even in the sense of Hinds County Districts 2 and 5 perhaps that would help although it would not be a realistic expectation that it's going to produce any black supervisors, and what's happened in Claiborne County I think unquestionably has helped.

BY JUDGE RUSSELL: Well there was a real good laboratory to have done a lot of study in and yet you don't even know what percentage of those people are registered to vote.

BY THE WITNESS: No, I don't. As I say, it's hard to get figures that I can come in a place like this and say I'm really quite sure that these are accurate. In some counties that is possible.

BY JUDGE COLEMAN: Go ahead.

BY MR. ALLAIN:

Q. Dr. Henderson, since you had found in your theory that [197] the only reason that black candidates statewide did not obtain as many votes as Charles Evers is on identification. Would it have been good to go up in Sunflower and Bolivar and analyze why people with an identification were not able to win?

A. The simple answer is that it is a matter of time. I have done a little bit of that, I have not done nearly as much as I would have liked to.

Q. Is Coahoma County black—

A. (Interrupting) Yes.

Q. (Continuing) predominately black. And in 1971 Dr. Henry Aaron, Aaron Henry ran up there, he's identified nationwide and he got beat by a white candidate.

A. Yes.

Q. Did you check into that?

A. I looked into that race as far as I could and that is a function largely of turnout, of lower rates of turnout.

Q. Lower rates of turnout for the blacks or whites?

A. Blacks.

Q. Well, didn't the blacks at that time realize if they had turned out they would have had the majority and could have elected him?

A. I think they probably did.

Q. Didn't he put on a pretty good campaign to get the vote [198] out?

A. I was not here that year, I do not know firsthand.

Q. In your investigation you didn't check to see what kind of drive he put on to see what caused the apathy of the black voter?

A. No, I didn't. I didn't feel that I needed to. I did not want to get into that much detail, I didn't feel it was at all necessary.

BY JUDGE COLEMAN: How long have you been in Mississippi, Doctor?

BY THE WITNESS: I have been in and out of Mississippi—

BY JUDGE COLEMAN: I mean how long have you been here on a permanent basis where you could look around you and see what was going on from day to day?

BY THE WITNESS: I have owned a house, the house that I said I lived in this morning and lived in it beginning in 1962 and then was gone from 1966 to 1972.

BY JUDGE COLEMAN: So you have been here now continuously only since 1972?

BY THE WITNESS: Right.

[199] BY JUDGE COLEMAN: You have not been in the State of Mississippi during any statewide election for legislators or other state officers, you were not here—

BY THE WITNESS: (Interrupting) Since 1972, right, correct, I was not here for the '71 election.

BY JUDGE COLEMAN: All right, sir. Were you here during any other statewide election as a resident of the state?

BY THE WITNESS: Yes, I was.

BY JUDGE COLEMAN: What year was that?

BY THE WITNESS: Well, for the summer. I was here during June, July and August both in 1959 and '63, and of course I was living here permanently in '63.

BY JUDGE COLEMAN: Have you voted in Mississippi?

BY THE WITNESS: Yes.

BY JUDGE COLEMAN: What years?

BY THE WITNESS: [200] '72, '73 and '74.

BY JUDGE COLEMAN: Yeah, but I'm talking about in a statewide race for legislators and governors, they're all elected at the same time—

BY THE WITNESS: (Interrupting) No.

BY JUDGE COLEMAN: You have never voted in one of those elections?

BY THE WITNESS: No, I haven't.

BY JUDGE COLEMAN: You expect to do so this year I am sure? You are a registered voter?

BY THE WITNESS: I am a registered voter.

BY MR. ALLAIN:

Q. Doctor, in the Kirksey case the Court found that in District 2 there are 53.4 percent non-white, 46.6 white,

and in District 5 46.0 white and 54 percent non-white. Now this 54 percent of non-white is reaching pretty close to the figure you gave me of between 54 and 65 percent, isn't it?

A. Yes, it is.

Q. In fact it touches it, gets right up there with it?

[201] A. Yes.

Q. Then would you want to correct your testimony somewhat and say since that is 54 percent non-white in District 5 and leads those individuals in District 5 knowing now that they do have a chance to elect a supervisor would get registered, would vote, would get behind a black candidate whether it be for the legislature or for a supervisor?

A. I apologize profoundly. What district are you talking about?

Q. District 5 says 46 to 54, 54 percent non-white.

BY JUDGE COLEMAN: District 5 Hinds County.

BY MR. ALLAIN: Hinds County. That was according to the Kirksey case the Hinds County redistricting case in which you have testified.

BY THE WITNESS: It's 54 percent non-white in District 5.

BY MR. ALLAIN: 46 white.

BY THE WITNESS: I have the same reaction to that once again that I had before which is that it is essentially that in District 5 as in 2 in order to have any good feel for [202] what is going to happen in an election to know what the voting age population is, not the total population. But by my earlier definition I would say clearly District 5 offers a much better likelihood than 2 of the possibility of electing a black supervisor.

BY MR. ALLAIN:

Q. Well let's don't talk about comparison of those two. Now let me compare what you told me earlier when you said in any plan district wide they would need at least between 54 and 65 percent black population and in those districts they would feel that they should partici-

pate and that's 54 percent, do you want to up that percent now?

A. No, I don't. I'm essentially agreeing with what you begin to say.

Q. Well, you've got 54 percent in District 5.

A. That's right.

Q. Would that hold true that in all likelihood the blacks in District 5 in regard to supervisors and representatives under the present legislative plan knowing now that they could elect two representatives and one supervisor that they would get out and vote, register?

A. At least get out and register, yes, that holds.

Q. I may have asked you this question earlier, but can you give me a ball park figure of how many of the plans [203] you discussed here earlier in which those combined counties would produce between 54 and 65 percent black population?

A. I honestly can't. I could work it up for you but I don't have it.

Q. Now you said over in Warren County they had 18,300 some odd individuals and therefore they would be entitled to a representative, is that correct?

A. Yes.

Q. Do you know whether all these blacks are in the same area of Warren County?

A. No, I don't.

Q. Well how would you put them in one District?

A. No Answer.

Q. How would you—

A. (Interrupting) I don't believe—

Q. (Continuing) How would you turn that 18,000 into a compact district for a representative in Warren County?

A. It's very important I think for me to reaffirm what I've said, which was that I was indicating the criticisms of the plan and professional opposition in multi-member districts and had made no effort to bring in any plan as I said early this morning delineating where District lines should be drawn within a [204] multi-member district. My only testimony on that point

has been that a multi-member district dilutes that voting strength.

Q. Well sir how could you use in criticism of a plan that Warren County has got 18,000 plus blacks and therefore they ought to have a representative and then say to us you don't know whether they're all in the same area. Isn't that an unfair criticism of the plan? The same way in Harrison County, isn't that unfair?

A. I hope it isn't, it doesn't appear to me to be unfair.

Q. One last question, Dr. Henderson. Do you know of any occasion on your own knowledge in which any blacks in Mississippi have been denied the access to the political process?

A. Since when?

Q. At any time.

A. At any time?

Q. Say within the last five years.

A. Of my own personal knowledge not within the last five years.

Q. Do you know of any blacks that have had difficulty in registering to vote within the last five years?

A. Of my own personal knowledge being right there on the premises, no.

[205] Q. In choosing the political party they desired to support, only your own personal knowledge?

A. Well I have students who would like to vote for political parties who are not on the ballot, yes, of my own personal knowledge—

Q. (Interrupting) Have they been denied because of race?

A. Oh.

Q. Let's talk about race, I think that's mainly what your testimony—

A. (Interrupting) Yes, sir, certainly much of it is.

Q. Do you know—

A. (Interrupting) I don't know, I don't know.

Q. In qualifying as a candidate for a desired party, I mean a desired office, based on race now do you know of any?

A. No.

Q. In participating in the candidates election process based on race do you know any?

A. No.

Q. In participating meaningfully in any other portion of the political process based on race?

A. In participating meaningfully in any part of the political process?

Q. In any other portion of the political process other than those that I've delineated there.

[206] A. Because of race?

Q. Because of race.

A. Let me say probably not.

BY MR. ALLAIN: No further questions.

REDIRECT EXAMINATION

BY MR. PARKER:

Q. Did I understand you to testify, Dr. Henderson, that it was your view that blacks have an opportunity to elect officials of their choice in District 5 of Hinds County under the Board of Supervisors Redistricting Plan?

A. That was not my testimony.

Q. Are blacks, according to your study and analysis of census statistics, in the voting age majority in that district?

A. Definitely not.

Q. They are in the voting age minority?

A. That is correct.

Q. Now if as a result of the Court decreeing single member redistricting plans a single member plan resulted in legislative districts which were black majority in voting age population substantially. What effect would this have on black registration in Mississippi according to your view?

[207] A. It should encourage it substantially.

Q. And what effect in your view does the present plan of multi-member districts where black majority counties are combined with white majority counties, what

effect does this have on black registration and black voting for legislative positions?

A. It tends to minimize it.

Q. On the voting statistics that were cited by Mr. Allain in his cross-examination of you did any of those statistics indicate how many black voters had actually voted in any of those counties or in any of those elections?

A. None.

Q. Is it possible to determine exactly how many blacks voted for Charles Evers or voted for Freddy Washington or voted for Mr. C. J. Duckworth as a percentage of the number of votes that they actually received or the number of votes that they received as a percentage of the number of black voters, if the statistics omit any relevant information on how many blacks actually voted?

A. It's completely impossible, it should not be attempted.

BY MR. PARKER: No further questions, Your Honor.

[208] BY JUDGE COLEMAN: Now for the benefit of the entire Court, Dr. Henderson, I want to ask you what percentage of the black people of Mississippi between 18 years of age and upward are now registered to vote?

BY THE WITNESS: For the state?

BY JUDGE COLEMAN: Statewide.

BY THE WITNESS: I have an even less reliable figure for the state even than for Claiborne County, I do not know. The figures that I get from the Institute of Politics, for example, I have even at that point some serious quarrels. It's all a matter of estimating.

BY JUDGE COLEMAN: So we are sort of just scuffling around in dark about this, aren't we, we don't know?

BY THE WITNESS: About accurate registration figures?

BY JUDGE COLEMAN: Well we just don't know what percentage of the black people in Mississippi are registered right now.

BY THE WITNESS: Oh, in some places you do.
[209] BY JUDGE COLEMAN: I'm talking about in the state—

BY THE WITNESS: (Interrupting) In the state--

BY JUDGE COLEMAN: (Continuing) as a whole, because we're talking here about state legislature, we're not talking about just one seat in the legislature, we're discussing the whole legislative setup. And I just want to know what the figures are statewide if you have them, but you've already told me you don't have them.

BY THE WITNESS: No, I think they're hard to come by at a moment in time. If all of us would get together and make a concerted effort to say two days before election this year perhaps we could get some reliable figures for a change.

BY JUDGE COLEMAN: Well, do people register by race now in Mississippi?

BY THE WITNESS: No, that makes part of it hard but you can trace down addresses.

BY JUDGE COLEMAN: It was knocked out by court order or just by change in statute or how, at one time they did register by [210] race.

BY THE WITNESS: Yes. And there is, you know, other suggestions from time to time that in fact racial figures—

BY JUDGE COLEMAN: I suppose at one time it was thought that it was an imposition on somebody to state his race and maybe they knocked it out on that account, I don't know. I had another thing or two here that I wanted to mention.

BY JUDGE RUSSELL: Could I ask a question?

BY JUDGE COLEMAN: Yes, Judge Russell wants to ask you a question while I'm looking in my notes.

BY JUDGE RUSSELL: On the question of the voting age and the registration, how is any Court, of course you say that you do not know the number of blacks that are registered or the percentage of blacks in any county, maybe you know one or two counties here that you have testified, how would this Court, if you placed it, which I don't believe the law requires, on the

voting age and registration reflex or a minority group, how would this Court ever have any knowledge in preparing any [211] or the legislature either, of any plan that would take care of a majority, a clear majority, say to 55 to 60 percent of those within voting age and those who registered, how would this Court go about coming about another plan based upon your theory?

BY THE WITNESS: The only place that you could do it, Judge Russell, is where census data are available as for example they are in Hinds block by block for the entire city precisely the number of people by race and by age, that's not true, it's also true of Biloxi, it's true of Meridian, perhaps one or two other urban areas. That's the only place you could do it with any competence.

BY JUDGE RUSSELL: Like Judge Coleman said, we've got to look at the state as a whole in this and we've got a lot of people waiting on a plan so that they'll know whether to run or not.

BY THE WITNESS: Well, you cannot do it I mean by what I've said because the census data is available, you cannot do it with absolute confidence, you can make some estimate on what census data is available but they are going to be estimates except for those instances that I have [212] cited.

BY JUDGE COLEMAN: Now Dr. Henderson, you were not asked on cross-examination but you testified on direct that this present apportionment of the Mississippi Legislature amounted to a racial gerrymander. Now first I would like for you to tell me what you mean by the term racial gerrymander.

BY THE WITNESS: It is a plan of apportionment which is so drawn in the context of a situation in which many, many other alternatives exist that ends up seriously under representing a significant racial portion of the population, and that is I think what I testified to here today, that whatever the intentions of whoever drew up the plan, the results excludes so many options of districts with lower variances, more compact, better representation for blacks, that the existing plan by comparison looks like a gerrymander.

BY JUDGE COLEMAN: I always thought that a gerrymander was something that was deliberately done with the purpose of attaining a desired result. Now of course I know discrimination can result from effect only without prior intent, but a gerrymander, you know who started it, [213] Brother Everest Gerry, and it's come down through the years and it's been used to accomplish a desired political result not always of a racial character. When you speak of a racial gerrymander in the context of our case do you mean a deliberate gerrymander or a resultive gerrymander?

BY THE WITNESS: I think increasingly in the professional literature, Judge Coleman, that a gerrymander does not have to be deliberate, it can be resultive, that's getting to be—

BY JUDGE COLEMAN: Is that the kind you're talking about in this case?

BY THE WITNESS: Yes.

BY JUDGE COLEMAN: Now then next I was somewhat surprised to hear you say without more elaboration that in your opinion this legislation did not represent an honest good faith effort on the part of the legislature to reapportion the state according to the one man one vote rule. Did you read the committee reports on this?

BY THE WITNESS: Yes, I did.

BY JUDGE COLEMAN: [214] You read them.

BY THE WITNESS: They were part of the submissions in the case.

BY JUDGE COLEMAN: You have read them?

THE WITNESS: Yes, I have.

BY JUDGE COLEMAN: And I suppose you've kept up in the newspapers with the general reports of what was going on in the legislature about this very vexing problem?

BY THE WITNESS: I think I have, yes.

BY JUDGE COLEMAN: Now why do you say the legislature was either dishonest or lacking in good faith in the enactment of this legislation?

BY THE WITNESS: Well I would not characterize them as dishonest, I would characterize them as lacking in good faith because they did not put forth what strikes

me as a rather obvious effort to discover what the alternatives were. One of the committee reports, for example, mentions the proposal offered by Mayor Evers, one of the committee reports has some comments on the [215] Valinsky plan. But beyond that point one of the unfortunate impressions that one gets, and maybe this is hearsay, I tend to think of it from my own personal definition of hearsay as hearsay, from the newspapers is that there were an awful lot of, I think expectedly, compromises going on and no legislator I'm sure wants to be out of a job if he can possibly not be out of a job and that's out of the opportunity to engage in public service for good of the state and its constituents and himself. But it simply comes back as a matter of numbers that the numbers at every turn are just too high, the variances are too high. Even compared with the plans, the maps of which you were presented this morning of my little machine exercises and that's all they were, there is not enough compactness, and again we're talking if you would like then, resulting bad faith or resulting lack of adequate effort, perhaps that's a better way to put it.

BY JUDGE COLEMAN: Well now let's see if I can nail it down. I think the Supreme Court, and I know this Court would look with a great deal of skepticism upon lack of honesty or upon lack of good faith. By the same token you can hardly level a more serious charge against a public [216] body than to say that it operated with a lack of sufficient honesty or in the absence of good faith. No legislator is here I suppose to testify about that part of it, but do you say, you don't say there's anything actively dishonest about this?

BY THE WITNESS: I never mentioned the word honesty or dishonesty.

BY JUDGE COLEMAN: I thought you said that they lacked honesty and good faith.

BY THE WITNESS: I didn't hear that as part of the question and I just said a minute ago that I'm not—

BY JUDGE COLEMAN: All right.

BY THE WITNESS: (Continuing) suggesting dishonesty at all.

BY JUDGE COLEMAN: Anyway then if I understand you correctly honesty is out of it?

BY THE WITNESS: Absolutely.

BY JUDGE COLEMAN: So we come back to good faith. Are you talking about good faith with reference to motive and purpose or [217] good faith as just judged by results?

BY THE WITNESS: By results.

BY JUDGE COLEMAN: I think its' very important that we clear this up, it was not gone into by anybody else in any detail at all and I must be frank and say I thought from the beginning that's what you meant by it but you didn't say so, so I thought I would give you an opportunity, you know, to do it.

BY THE WITNESS: Thank you.

BY JUDGE COLEMAN: I believe that's all from the Court. Thank you very much, Dr. Henderson.

[Exhibits Omitted]

* * * *

RIMS BARBER

* * * *

[217] BY MR. PARKER: The plaintiffs call Mr. Rims Barber.

BY JUDGE COLEMAN: Let's take a recess for about 10 minutes.

(Court recessed at 3:35 p.m., for 10 minutes.)

BY JUDGE COLEMAN: [218] Before the recess the plaintiffs had offered and had marked for identification their exhibits 28 and 29. The Court has examined these exhibits, offered exhibits, and we feel that these amount to a resume of evidence already in the record and it's probably improper for us to admit them because it accentuates some of the evidence at the expense of other portions of the evidence, all of which has been heard and ought to be weighed together. So if you get right down to the point on the thing we would consider that it's not properly admissible but you've already got it marked for identification so it's in the record and

if we make an error in that regard, why it no doubt will be reviewed but we think that where you have the evidence anyway that it's not correct to then have resumes of it introduced by way of accentuation and emphasis. We will take it all in total the record as a whole, and the Clerk already has the exhibits that have been properly marked for identification. You may proceed, Mr. Parker.

RIMS BARBER,

called as a witness for and on behalf of the Plaintiffs was sworn and testified as follows:

BY JUDGE COLEMAN: We will now at the outset, to save as much time as [219] possible in any discussion back and forth between the bench and lawyers in the case, does this gentleman already have a deposition in the record?

BY MR. PARKER: That's correct; Your Honor.

BY JUDGE COLEMAN: Do you propose to examine him about matters not covered in the deposition?

BY MR. PARKER: I do, Your Honor.

BY JUDGE COLEMAN: You may proceed.

DIRECT EXAMINATION

BY MR. PARKER:

Q. Mr. Barber, would you state your name and address, please?

A. Rims Barber, 166 Riverpark Drive.

Q. What is your current—

BY JUDGE COLEMAN: I didn't get your first name, please, sir.

BY THE WITNESS: R i m s.

BY MR. PARKER: B a r b e r.

BY THE WITNESS: [220] B a r b e r.

BY MR. PARKER:

Q. What is your current position, please, Mr. Barber?

A. Associate Director of the Delta Ministry.

Q. Would you tell us what the Delta Ministry is?

A. The Delta Ministry was begun in 1964 to assist persons and groups of people who are oppressed by poverty or by discrimination in the State of Mississippi.

Q. What is your, are you an ordained minister?

A. Yes.

Q. What is your educational background, please?

A. I have a Degree, a B.A. with honors in political science, I have a year of graduate work in political science and I have a Master's Level Degree in Divinity.

Q. What has been your experience, practical experience and practical knowledge in analysis of Mississippi politics?

A. I have spent a considerable portion of my time doing analyses of elections, voter behavior, primarily for the purpose of developing educational materials and workshop series for people who had previously been excluded from the political process so that they could learn more about it, how they functioned within it, so that they could better and more fully participate in [221] the political process.

Q. What elections have you analyzed in Mississippi?

A. 1967 general election, 1971 general election, some analyses of two municipal elections, '69 and '73, '68 and '72 presidential elections.

Q. And how long have you lived in Mississippi?

A. 10 years.

Q. Have you worked in assisting and aiding in voter registration drives in assisting candidates for office as part of your work?

A. Yes, I have.

Q. And that has been since 1965?

A. Since 1964 I've assisted numerous, in numerous places and at different times people in those specific activities, yes.

Q. Have I asked you to do an analysis of the electoral probabilities for each of the legislative districts as established by House Bill 1290 and Senate Bill 2976?

A. You asked me to do a probability of bills in which there was a black candidate in 1971.

Q. But have I asked you to compute this based on the probability of black candidates winning any of these districts for 1975?

A. Yes.

[222] Q. And have you calculated for each of the current legislative districts described by 1290 and 2976 the optimum black vote for each of those districts?

A. Yes, I have.

Q. And would you describe to the Court, please, what you mean when you say optimum black vote, what formula or criteria are you using to calculate this?

BY MR. SUMMER: If the Court please, to which I would like to enter an objection at this time that this goes into the winning of political elections which I don't believe any Court any where at anytime has made a ruling that it is necessary to reapportion on the possibility or the necessity of reapportioning for a black to absolutely win an election. Now we have gone into the processes but now we are going into whether or not they have created it so that they can win, and all of this study apparently is the probability of winning which has absolutely no relation to any of the law that I'm familiar with nor the issue before this Court at this time.

BY JUDGE COLEMAN: Well we'll reserve a ruling and let's see what his answer is and then we will be better able to judge that.

[223] BY MR. PARKER:

Q. Would you define optimum black vote, Mr. Barber, and criteria that you have used to calculate it?

A. Yeah, I'm concerned about what was just said and I'm trying to get my head back together because I'm very much concerned with the probability of losing, and that, I think, is a discriminatory factor that exist and where we started in '67 was with a whole lot of black candidates feeling in their heart that they were going to win because they looked around their neighborhood and saw a lot of black people and said oh, I ought to run for office and I should win. They lost and they were heartbroken because they didn't understand the probability of loss, and that motivated, you know, trying

to get them to understand that and their communities to understand that and how they could build upon their experience motivated our studies. And I think that is relevant and we began by looking at a number of factors. First, voting age statistics which was the most relevant beginning point, then registration statistics, registration habits in a variety of ways, turnout effective, what I call effective vote, that is we have looked at elections to see how many people who showed up on election day in 1971, November, failed to vote for [224] governor for any candidate and there were 20,000 of those. And we have talked to people to try and figure out why, you know, that's just a sizable number of people who somehow got to the polls and never were able to cast a, you know, or for some reason did not cast a vote. Taking these factors into consideration we find that there is a differential primarily because of past discrimination, because of economic dependence, because of age and accessibility to transportation and because of illiteracy, ability to read—

BY MR. ALLAIN: (Interrupting) Object. Your Honor, he's not responsive to the question and what's on the deposition.

BY MR. PARKER: He's explaining his formula, Your Honor.

BY JUDGE COLEMAN: I'm going to let him explain his formula, I don't know—

BY THE WITNESS: (Interrupting) We therefore come up—

BY JUDGE COLEMAN: (Continuing) just where it's going to take us to right now.

BY THE WITNESS: [225] I'm sorry, sir.

BY JUDGE COLEMAN: Go right ahead.

BY THE WITNESS: You know, therefore came up with a formula which I think is the most conservative possible formula. The differential in registration between white registration and black registration in a study of several estimates of that registration totals vary from 10 to 17 percent, that is the black registration estimates vary from 65 percent to 70 percent—

BY MR. PARKER:

Q. (Interrupting) Of the voting—

A. (Continuing) of the voting age population in the state is registered. For whites the estimations vary from just under 80 percent to, I believe 83 percent.

BY JUDGE COLEMAN: Now you've lost me. Would you please restate that?

BY THE WITNESS: I'm sorry.

BY JUDGE COLEMAN: What were the estimates for the black—

BY THE WITNESS: (Interrupting) 65 to 70 percent of voting age eligible blacks that are registered.

[226] BY JUDGE COLEMAN: Now is that in the State of Mississippi?

BY THE WITNESS: In the state of Mississippi.

BY JUDGE COLEMAN: How does that compare with the percentage found in other states, I'd like to have some comparison if you have it between states that are under the Voting Rights Act and those that are not. It seems to be that 65 to 70 percent might be fairly high, but I don't know until you give me something to compare it with.

BY THE WITNESS: I don't know, sir.

BY JUDGE COLEMAN: You don't have any comparisons from other states?

BY THE WITNESS: No.

BY JUDGE COLEMAN: Anyway it's 65 to 70 percent for the blacks and as high as 80 percent for the whites?

BY THE WITNESS: As high as 83 percent for whites, perhaps as low as 77, 78 percent.

BY JUDGE RUSSELL: [227] How did you arrive at those figures?

BY THE WITNESS: I have looked at a number of studies that people have done and I have done some myself based on precinct data, taking precincts in counties from variety of areas and then extrapolating, also taking the Institute of Politics studies which are done by calling up the Registrar and saying how many have you got.

BY JUDGE COLEMAN: So you feel—

BY THE WITNESS: (Interrupting) And several other—

BY JUDGE COLEMAN: For whatever relevance that it may have you feel the Court would be safe in assuming that statewide, of course there's variations I suppose in all states—

BY THE WITNESS: That's right.

BY JUDGE COLEMAN: Mississippi has lots of variations from Tennessee to the Gulf in many things, from fertility of the soil on up and down, but statewide 65 to 70 percent of the black people of voting age are registered, and as high as 83 percent, from 77 percent to 83 percent of the white people are registered. Now then I want [228] you to go next, maybe your counsel was fixing to take you there, on what portion of those people vote?

BY THE WITNESS: Just before I get there—

BY JUDGE COLEMAN: All right.

BY THE WITNESS: In my attempting to make a formula I chose the smallest possible differential, it is at least a 10 percent differential between the black figure and the white figure. Okay?

BY JUDGE COLEMAN: All right.

BY THE WITNESS: And I at all times would choose the most conservative one so as not to be wrong for if I err on the other side. There are estimates, estimates for turnout have a greater variety from place to place than does registration or at least it appears that way, that turnout varies from, there were four counties that had in 1971 a very, very low turnout, Tunica, Quitman, Sunflower and Leflore. There are some studies, principally I would rely upon the Lester Salliman Study published in December of '73 showing the varieties of turnout as based upon economic de- [229] pendence and correlating it with plantation country tends to turn out not as well as a place where people own their own land, among blacks, and the same could be shown in other comparisons of that type. The turnouts range from 60 percent to 70 percent for black on an average statewide and from around 75 to 80 percent for whites in an election of the magnitude of the '71 gubernatorial election.

Those figures will hold only for highly publicized, hotly contested race. They will go up and down depending on the contesting of the race, turnout is perhaps the hardest one to pin down because it depends, you know,—

BY JUDGE COLEMAN: Just to be practical about it that was true even in the days before the black people ever regained the vote, wasn't it, even among white people. You can just show disparities, I've seen them experienced depending on how much interest there was in an election, how many offices were to be voted on, whether it was a, say a judicial race or a congressional race or maybe a special election.

BY THE WITNESS: The turnout, this recent congressional election, in the primary here in Hinds County you had exceedingly small turnout.

[230] BY JUDGE COLEMAN: Both black and white?

BY THE WITNESS: Both black and white, both republican and democrat, so the turnout is a harder one to predict.

BY JUDGE COLEMAN: Pretty ephemeral, isn't it?

BY THE WITNESS: Sir?

BY JUDGE COLEMAN: Pretty ephemeral, e p h e m e r a l?

BY THE WITNESS: Yes. But it's predictable in certain kinds of elections where there really is a hot fight going on and especially at the local level you can see a high turnout if something is really hotly contested. And a racial contest in a district or an area tends to bring out more people, both black and white, than would vote in a relatively uncontested kind of race.

BY MR. PARKER:

Q. What is the racial disparity then that you attribute to your turnout criterion?

A. I use a minimum of 10 percent differential. I use the minimum.

[231] Q. Okay, now how do you define your term effective votes?

A. Well we did, as I eluded before did some study to see how many people cast challenged ballots, went through the process of going through all the boxes in Hinds

County, for instance we computerized in counting the numbers and seeing how many votes turned out and how many were fewer, how many fewer people cast effective votes, had votes counted as turned up on election day and signed their name in, and we came up with an average, we did this in several places, with an average of 4 percent among blacks and 1 percent among whites failed to cast an effective vote. Therefore the effective vote or effective turnout is the figure that I can then arrive at in a minimal way projecting from voting age population.

Q. From this formula is it possible to derive what you call optimum percent of the black vote, that is a maximum in terms of black voting strength that can be effective under optimum conditions?

A. Yes.

Q. And can this also, the converse of that can be then for the whites?

A. Simply by subtracting one number from a hundred gives you the other number.

Q. Now using your formula is it possible to calculate [232] whether or not black voters can elect legislators of their choice in any of the present legislative districts as determined by House Bill 1290 and Senate Bill 2976?

A. Yes.

Q. Would you describe the process by which this calculation can be performed?

A. For applying the process that I talked about, I applied it to legislative district after legislative district, I find that there are, that District 16 in the House, Holmes and Humphreys is the only district, as they are now constituted that comes up with an effective vote percentage more than 50 percent black and conversely less than 50 percent white.

Q. Now what voting age population statistics did you rely upon in reaching this conclusion?

A. Ellen Bryant's book has the voting age population by the 1970 census in most usable form. I used that for the '70 census, she also has the voting age population projection for 1975 and it now is 1975 so I used those in arriving at this conclusion.

Q. Let me hand you a document which has been marked Exhibit 4 and ask if you can identify that and tell us what it is?

A. Yes, it is a document which was in my deposition. [233] Q. And what calculations are these, are these your calculations?

A. These are my calculations.

Q. Hand this up to the court. And what do they reflect?

A. They reflect 1975 voting age population, the percent black for the districts enumerated and my calculation of the optimum percentage of the total vote for an election that will accrue to a black candidate or a black supported candidate.

Q. In other words a candidate supported by the black voters?

A. That's correct.

Q. Now in any legislative district for either the House or the Senate under House Bill 1290 and Senate Bill 2976 is it possible for black voters to elect legislators of their choice based on these calculations?

A. Only in District 16, Holmes and Humphreys.

BY JUDGE COLEMAN: That is based on the assumption that all of the black people would unanimously agree on who they want?

BY THE WITNESS: That's correct, I can speak to that because our studies were, you know, included that aspect.

BY MR. PARKER: Ask that this document be admitted in evidence, Your [234] Honor.

BY JUDGE COLEMAN: It will be admitted.

(Received and marked in evidence as Exhibit P-30.)

BY MR. PARKER:

Q. Okay. Most of the districts, determined by House Bill 1290 and Senate Bill 2976, are white majority in population and you have heard Dr. Henderson's testimony that this results in part from combining black majority counties with whites majority counties?

A. Yes, that is correct.

Q. Is it probable that any legislator supported by the black voters can gain election in any districts which are white majority in population?

A. No.

Q. Now some of—

BY JUDGE COLEMAN: Are you expressing that as a fact or as an opinion?

BY THE WITNESS: Yes, probability.

BY JUDGE COLEMAN: In other words that's just your opinion?

BY THE WITNESS: No, a statistical probability is a fact that it is improbable that a black will be elected in a majority [235] white district. I did not say it was impossible, I said it was improbable.

BY JUDGE COLEMAN: From the statistics?

BY THE WITNESS: From the statistics, from an analysis of all the races that have gone on in the last 10 years since the Voting Rights Act, we have looked at all these races, there have been a half dozen exceptions in which people won for whom the probability was that they would lose, but that's out of several hundred who have run. Now there are some exceptions but the probability, the fact of probability is that they will lose.

BY JUDGE COLEMAN: How many black county officials do we have in office in Mississippi today?

BY THE WITNESS: There are 10 supervisors, there are numerous JP's and constables, that's the easiest office to get elected to, I believe,—

BY JUDGE COLEMAN: Well, they run in the same area that a supervisor runs in.

BY THE WITNESS: [236] Well, but—

BY JUDGE COLEMAN: I'm talking about so far as voting strength is concerned.

BY THE WITNESS: Oh, oh. As far as politically what happens on election day there is a much hotter contest for supervisor—

BY JUDGE COLEMAN: I don't believe we're here to adjudicate political questions—

BY THE WITNESS (Interrupting) I understand.

BY JUDGE COLEMAN: (Continuing) we are here to talk about constitutional issues. Anyway, to get the

statistics nailed down a little better you have ten supervisors now in the state who are in office who are black?

BY THE WITNESS: That's correct.

BY JUDGE COLEMAN: How many beats in the State of Mississippi today have a majority of black population?

BY THE WITNESS: If you will excuse me.

BY JUDGE COLEMAN: [237] Many more than 10?

BY THE WITNESS: It would be about, majority black population which is not what I consider to be the criteria.

BY JUDGE COLEMAN: I know, but that's what I'm asking you about. You have ten black supervisors in the State of Mississippi today, and I want to know how many supervisors districts have a predominately black population by way of comparison.

BY THE WITNESS: I can only give you an estimate figure on that because my document does not list, what I have in front of me does not list every black majority by population beat.

BY JUDGE COLEMAN: We know that we have 410 districts in Mississippi.

BY THE WITNESS: Yeah, 410 districts—

BY JUDGE COLEMAN: How many of them have, by estimate how many of them have a majority black population?

BY THE WITNESS: I would say probably 80 to 90 of them of which 40 of them have a voting age black population which is for electoral purposes what's needed to even begin [238] talking about winning. I could be much more accurate on the voting age population than on the general population.

BY MR. PARKER:

Q. Have any black supervisors ever won elections in a supervisors district that was majority white in population?

A. No.

Q. Have any black legislators, have any black candidates for the legislature in Mississippi since 1965 ever

won election to the legislature in a district that is white majority in population?

A. No.

Q. Now, there are also in House Bill 1290 and Senate Bill 2976 some legislative districts that are black majority in population. Have you done detailed calculations according to your optimum black vote formula as to whether black candidates have a reasonable likelihood or probability of success in those districts?

A. Yes.

Q. Would you hand the Clerk, do you have a copy of your calculations? Do you have an extra copy?

A. I have one and two extras.

Q. Would you hand one to counsel for the defendants to Mr. [239] Marshal, please. These calculations show, Mr. Barber, could you summarize your conclusions from these calculations?

A. These calculations show that each of these particular districts, and there are five of them that were looked at, while there is a substantial black population there is not a, there is a white majority effective vote probability so that blacks will in all probability lose in those elections, or elections in those districts.

Q. And this is calculated on the basis of the 1975 projections of voting age population?

A. Both from the '70 census and from the '75 projections.

Q. And in each case do you give the percentage of the effective vote that blacks are likely to have in each of these districts?

A. Yes.

Q. And whites as well expressed in percentages?

A. Expressed in percentages.

BY MR. PARKER: Ask that this be admitted in evidence, Your Honor.

BY JUDGE COLEMAN: That's supposed to have some bearing on the question of racial dilution, it will be admitted on that basis. I don't think it has anything to do with [240] reapportionment on one man one vote.

BY MR. SUMMER: Your Honor, I object on the grounds that the formula has never been validated, there

is nothing here other than his own word that he concocted a formula that we know nothing about, the Court knows nothing about, and laid it out into some figures that met their requirements.

BY JUDGE COLEMAN: Well, that goes to the weight of it all right, maybe not the admissibility, we'll admit it.

(Received and marked in evidence as Exhibit P-31.)

BY MR. PARKER:

Q. Were you present in the House of Representatives on March 14, 1975 when the Amendments to House Bill 1290 were debated on the floor of the House?

A. Yes, I was.

Q. And did you hear the debate and were you present during the entire debate?

A. Yes, I was.

Q. It has been admitted by the defendants in this case that Representative Charles Mitchell of Hinds County introduced floor amendment number 1 to House Bill 1290 in the 1975 regular session that would have provided single member districts, single member [241] legislative districts for the House in Hinds County. Do you recall the debate on Representative Mitchell's Amendment?

A. Yes, sir.

Q. Would you tell the Court, please, this afternoon what it was that Representative Howard Parkman, a member of the Hinds County Delegation, said about Representative Mitchell's Amendment?

BY MR. SUMMER: We object to that, if the Court please.

BY MR. PARKER: Part of the legislative history, Your Honor.

BY MR. SUMMER: Legislative debate on the floor.

BY JUDGE COLEMAN: Well, aren't those debates recorded?

BY MR. SUMMER: To my knowledge they are not recorded, no, sir.

BY JUDGE COLEMAN: I thought that they had taped all the discussion in the House.

BY MR. SUMMER: I have never heard of a legislative debate being recorded, I could be wrong, of course, in Congress I think they record it verbatim, but in the Mississippi [242] House I know of no such procedure.

BY JUDGE COLEMAN: They taped them in the Mississippi House when I was a member of the House but that's been a good while ago. The reason I raised the point is because if they are recorded that would be the best evidence of what was said rather than what somebody else remembers to have been said and then of course I don't know—

BY MR. SUMMER: (Interrupting) I would agree with the Court that that is true, of course you would be more familiar with that than I since you were a member of the House and I—

BY JUDGE COLEMAN: Well I know, that was back in 1960 and '62 and it's been a long time ago. They may have discontinued it but they used to have a tape recorder that was hooked up to the mikes and everything that was said was recorded. The reason I know is because I got several transcriptions of what was said there on certain occasions for my own personal use, but in any event—

BY MR. SUMMER: (Interrupting) I would certainly object if they do have such a recording that it be used as the best [243] evidence. Secondly my objection would be that a legislative debate per se between a hot issue involving a man's seat in an office is no way to prove the validity or invalidity of a plan that was adopted finally by the whole legislature, and to get into single individual debates among those members most vitally effected by the plan would be to get into personal debates based on personal feelings and have no value whatsoever other than how they felt about it. It's based on no formula, it may have been personal feeling insofar as we know. Maybe he can establish that. But unless he does establish it I certainly would object to any verbatim debate or how a single member who was vitally effected voted.

BY JUDGE COLEMAN: Well we can settle that, I think, very easily by directing the Marshal to go to the telephone and see if he can get ahold of the Clerk of the House and see whether or not these debates were recorded on tape.

BY MR. PARKER: I can simply ask the witness, Your Honor.

BY JUDGE COLEMAN: If he knows, I don't know whether he knows.

BY MR. PARKER:

[244] Q. Are you familiar with the proceedings of the Mississippi Legislature and the House of Representatives, Mr. Barber?

A. Yes.

Q. And in what capacity?

A. I have assisted Representative Clark for some years now.

Q. Are the debates in the House of Representatives recorded verbatim in any way?

A. If they are it sure is a secret to me.

Q. As far as you know they are not?

A. As far as I know they are not.

BY JUDGE COLEMAN: Well all right, sir, we will just have the Marshal contact the Clerk and see if those debates are recorded, and if so we will get the recording of the entire debate and that certainly will be relevant on legislative history if we can get an accurate resume of what happened of the entire debate. Find out about it, please, sir, and just save that point until, we will come back to it when we learn the answer.

BY MR. PARKER: Could we ask the Court leave to do this, to allow Mr. Barber to testify subject to Attorney General Summer's objection?

[245] BY JUDGE COLEMAN: Well let's just wait and see if we can get the best evidence. If we can why we will get it, if not we will see what we'll do then. Ordinarily of course the legislative history in the Congress as you will know is proven by the stenographic report of the debate because they are all recorded in Congress. Now we get off into a very serious area when

we start allowing legislative history to be shown by what some person thinks he heard or may have heard or by stating one isolated portion of what was said by some one member of the House. I'd rather avoid that if we can by getting the entire record of the whole debate.

BY MR. SUMMER: Court please, we might be able to add some light to the fact, and I can't recall the citation at the present time, but the Mississippi Supreme Court I think has held on numerous occasions that you can't look behind the law after the governor has affixed his signature as to motive. And I think that's well-established in Mississippi.

BY JUDGE COLEMAN: Well I think it's the law everywhere that you can't look to motive, but this wouldn't altogether be a matter of motive, I think. We'll just wait and see if [246] we can get the record on it.

BY MR. PARKER: I may say, Your Honor, that I am familiar with the history of the tuition grant cases in Mississippi in which the United States and private plaintiffs challenged successive enactments by the Mississippi Legislature of tuition grant legislation, and my recollection is that in those cases that the Attorney General's office stipulated that no recorded debate was made of legislative debate on legislation in the Mississippi Legislature, and that therefore the Court was required to rely on other evidence as to what exactly occurred in the legislative debate.

BY JUDGE COLEMAN: Well I know, we don't have to get in such a big hurry about what we can find out so far as facts whether they have the recordings or not. If they do not well then we will see about it. Did you have any other evidence you wanted to adduce by this witness?

BY MR. PARKER: No, Your Honor, that was all.

BY JUDGE COLEMAN: Well we should have a report by the time they get through cross-examining him, if they do cross- [247] examine him. Any cross-examination, gentlemen?

CROSS-EXAMINATION

BY MR. SUMMER:

Q. Mr. Barber, you say you started in 1964 to assist those persons poverty stricken and discriminated against previously to register and to vote. When was the last time, sir, that you took someone to register or to vote and were refused?

A. I have within the last, say three years, had some instances, I'm trying to recall in my mind, of objecting to procedures within a precinct that resulted in people being unable to cast a ballot that would be counted, and I guess that's what you're talking about.

Q. Have you ever observed under the same circumstances and the procedure that you're talking about a white person also being prevented from voting because of similar circumstances?

A. I cannot specifically recall, but if it was it would have been, I have personally witnessed many blacks so excluded from the process. I have not personally to my recollection seen many whites, perhaps some.

Q. Some?

A. No Answer.

Q. Now, let's get into a time factor and let's get directly. Tell the Court the name, place and circum- [248] stances around the last person whom you knew of your own knowledge who wanted to register to vote who was prevented from doing so.

A. Let me see what I've got in the way of notes. I've got some with me.

BY JUDGE COLEMAN: To shorten matters some for the witness by saying those instances in which he saw some person denied the right to register on account of his race, that is what we are concerned with. They might say you haven't lived here long enough or something else, let's get down to the people you have seen denied the opportunity to register on account of race and when and so forth.

BY THE WITNESS: I have not witnessed denial of registration right in quite some years, almost all ten, on the right to vote. The last I recall was in Hollandale in 1973 and I'm looking for my—

BY MR. SUMMER:

Q. (Interrupting) Was that on the basis of race?
A. I believe so.
Q. Do you know?
A. No, sir, I cannot attribute motive—
Q. (Interrupting) Tell us of the last one you know.
[249] A. But all, you know, I can say is that if I can find my notes I can tell you how many people it was and they were in that instance all black. There were no whites so excluded in that instance, it was attributed to me by those people who were denied as their feeling that it was done because of race. I cannot attribute motive personally to the election official who did it.
Q. And what you're saying is that the people attributed that fact to you and you did not know it of your own personal knowledge?
A. Except that the effect was a racial one.
Q. Well how could you know the effect was racial if you did not know of your own knowledge why?
A. One, because each excluded person was black, the excluding official was white, the contest was one of a heated contest between a black and a white candidate, the effect of black people not being able to cast a ballot appears to be racial discrimination to me.
Q. Do you know whether or not they met the requirements to cast a vote at that particular time?
A. I, some of them did, some of them did, I did not verify each and every one.
BY JUDGE COLEMAN: [250] Were they allowed to cast a challenge ballot—
BY THE WITNESS: (Interrupting) Challenge vote which was not counted, right.
BY JUDGE COLEMAN: But they were allowed to cast a challenge ballot which is, you know, the practice of challenging the right to vote has gone on so far as I know in all generations, regardless of race, but they

were allowed at least to cast a ballot subject to challenge and then you say at a later time they were just not counted?
BY THE WITNESS: That's right.
BY JUDGE COLEMAN: All right. Now what was the reason assigned for not counting them?
BY THE WITNESS: No Answer.
BY JUDGE COLEMAN: We're talking of Hollandale, I suppose, in 1973, what kind of race was going on?
BY THE WITNESS: It was a municipal election.
BY JUDGE COLEMAN: [251] Town election?
BY THE WITNESS: Town election. And I have the note on it here somewhere. I looked at it last night.
BY JUDGE COLEMAN: So this really was local authorities rather than state authorities?
BY THE WITNESS: Yes, sir. Well all election officials in a sense are local authorities.
BY JUDGE COLEMAN: Well I must say to you before we get the record all garbled up here that elections in municipalities are carried on by people chosen by the municipal authorities whereas in all other elections they are chosen by the county officials who conduct both state and county elections, and I think to that extent they are state officials.
BY THE WITNESS: No, I wasn't speaking of legally, I was speaking they are local people indigenous to that area—
JUDGE COLEMAN: Oh sure.
BY THE WITNESS: As opposed to people coming from—
[252] BY JUDGE COLEMAN: Everybody is supposed to vote where they live.
BY THE WITNESS: I can't find my notes on that. But I have on several occasions over the last few years, you know, made record of problems surrounding elections and denial of the right to vote and we have filed papers concerning that with Justice Department and with lawyers.

BY MR. SUMMER:

Q. Well now if that is true, Mr. Barber, why is it that when I made a request of the Justice Department of any such instances they may have had in the past five years they told myself, and I believe both congressional committees, that they had none.

BY MR. PARKER: We object, Your Honor, Mr. Barber is not with the Justice Department and would not be able to explain in any way whether they were adequate or inadequate in any explanation to Attorney General Summer.

BY JUDGE COLEMAN: The objection will be sustained, you can go into that when you put on your own case if you so desire.

BY MR. SUMMER:

Q. What I'm asking you, Mr. Barber, is are you telling this Court that you have had a lot of experience in [253] this area, that you do or do not believe that black people can participate in the political process today if they so desire?

A. I think that they technical bars to political participation are 99 percent down.

Q. 99 percent down. So in your—

A. (Interrupting) But, you know, if I could continue.

Q. That's a pretty good percentage in any field, isn't it?

A. You know, I think that the, the outright go-aways are at a very minimum. I do talk to real people however who still carry on the feeling, especially among the older people who have been around a long time, there are those who still believe and there is nothing I can say to change them, that if they go and vote or go and register someone will take away their welfare check. Now they believe that. I'm not saying that I know of that happening at all, but they do believe that, and they act politically on that belief in the same way plantation people who live on plantations tend to vote and register in smaller numbers becasue they believe that mysteriously the man is going to know who they voted for.

Q. Do you know of any state official elected, appointed or otherwise who has imparted that feeling to anyone?

[254] A. I am sure that, not of my own personal knowledge.

Q. All right, that's all I want to know. Now, you are familiar with Mr. Clarence Mitchell, Jr., the head of the NAACP, are you not?

A. By reputation—

BY MR. PARKER: (Interrupting) I object, Clarence Mitchell, Jr. is not the head of the NAACP.

BY MR. SUMMER: All right, whatever he is, maybe you could tell me.

BY MR. PARKER: And I object to his characterization of whatever he is too.

BY MR. SUMMER: Your Honor, I'm simply trying to find out his title, I'm not trying to belittle the man at all.

BY JUDGE COLEMAN: Let's don't have any argument now back and forth among the lawyers, and just ask him who Mr. Mitchell is and so forth, I know Mr. Mitchell personally but I couldn't say what his official functions are and what organizations he belongs to. Why don't you just ask the witness.

BY MR. SUMMER: Thank you, sir.

[255] Q. Do you know Clarence Mitchell, Jr.?

A. Not personally, by reputation only.

Q. Do you know what office he may hold?

A. I believe, well he is a member of the Leadership Conference on Civil Rights and I believe that he is, I believe he is a registered lobbyist in Washington for both them and the NAACP, but I would not swear under oath that that is what he is, but that's what I believe I recall as being his position.

Q. You do then believe that he holds a leadership spot in the NAACP?

A. Yes.

Q. You take issue with his statement that 300,000 out of 450,000 blacks in Mississippi of voting age are registered to vote?

A. The figure I use is 290,000, but I won't—

Q. (Interrupting) So that's roughly 75 percent of those who are of voting age who have registered and are qualified to vote in Mississippi, is it not?

A. I believe it is like 60, I want to look at something before I respond to that. I'm not clear on what the potential voting age population is statewide and I don't have that figure in front of me, and that's what I was looking for.

BY JUDGE COLEMAN: [256] Let me see if I can't clear this up and move on—

BY THE WITNESS: (Interrupting) Somewhere between—

BY JUDGE COLEMAN: Haven't you already testified that it was somewhere between 67 and 73 percent?

BY THE WITNESS: Yes, sir.

BY JUDGE COLEMAN: All right.

BY THE WITNESS: 66 to 70, I think.

BY MR. SUMMER:

Q. All right, sir. Are you familiar with the city of Corinth?

A. Yes, I am.

Q. Are you familiar with a recent municipal election in the city of Corinth?

A. Yes, I am.

Q. Are you familiar with the fact that a black man was elected to the city council in Corinth?

A. Yes, I am.

Q. Are you familiar with the percentages of black residents in the city of Corinth?

A. Yes, I am.

[257] Q. Would you tell the court those figures?

A. It's about 10, 15 percent black.

Q. And by what percentage was the gentleman elected?

A. At least by a majority, I don't recall offhand.

Q. How does this square with your—

A. (Interrupting) I said earlier that there were, you know, five or six exceptions of some significance and one of them happens to be that one, yes, sir. You can find them all.

Q. Yes, sir.

A. Go ahead.

Q. Well you've got a theory and we—

A. (Interrupting) Well that's fine, my theory—

Q. (Continuing) are testing your theory.

A. That's cool.

Q. And we found that you've got 80 to 90 supervisors districts in this state whereby if the blacks were to vote in block as your theory carries out that you would have 80 to 90 supervisors instead of 10.

A. No, that isn't what I testified to on direct. I said 40 approximately have an effective—

Q. (Interrupting) Your registered to voting age statistics.

A. Yes, sir, I can't vote five year olds.

Q. All right, sir. Now do you know anywhere in the law or otherwise where voting age has anything to do with [258] the one man one vote requirement of reappportionment?

A. My testimony had to do with the history of discrimination in the State of Mississippi that that was a positive factor for making blacks participate in the political process at a ratio less than white did, and that that is a significant factor in Mississippi politics today, and that that factor deemed that the reality of today comes into play when you begin discussing dilution of the black vote. I in no way said that it effected the one man one vote theory.

Q. All right, sir. Do you know how many black public officials the State of Mississippi has today?

A. The Joint Center in Washington reported 190, but there was a great variety of officials included among that.

Q. Do you know how many states have more black elected officials than the State of Mississippi?

A. Probably three or four and that's all.

Q. If I told you it was one would you disagree with that?

A. Well I'd want to go look it up because, you know, I don't want to take your word for it.

Q. I don't want you to take my word for it. You are the one who has run all of these studies but unfortunately it only relates within the State of Mississippi.

A. That's right.

Q. And these are matters of grave importance and in order [259] for them to be effective I think they have to compare with something. And you are comparing them with nothing. So, and I'm simply stating do you know how many states have more black elected officials than Mississippi, even those who are not under the Voting Rights Act?

A. I don't know for sure, no.

Q. All right. Would you say that the blacks had a problem in the state of Michigan in registering and voting?

A. I can't speak to that question, I've never made a study of black political participation in Michigan.

Q. And as a matter of fact you have never made any comparisons with the testimony, of all the testimony that you have given us here about the manner and method and so forth of how they register and vote, you have made no comparison with any state who may never have had any restrictions on registering and voting of blacks, have you?

A. Well one comparison I did look at and it was not extensive since this is on reapportionment of the legislature and we only have one black legislator, I do look at Alabama with a dozen and Georgia with more than that and Louisiana with a bunch, you know, of other places that have less overall statewide percentage black population—

[260] Q. (Interrupting) Do you know what kind of—

A. (Interrupting) They have more black representatives at the legislative level, you know, which is what I think is most relevant here is legislative level, not how many—

Q. (Interrupting) Why?

A. Well because each state has different kinds of offices and those list all sorts of political offices that may or may not correspond to offices in other states, and what we are really talking about is legislative, how

public policy is made on a statewide basis by a state legislature, and in that respect Mississippi only has one and there is virtually no black input, you know, into Mississippi legislature, there is significantly more in Alabama, Georgia, Louisiana, Illinois, New York, Michigan. I could name states in which that is the case, and that's what I think the issue is here today.

Q. All right. Then maybe you can explain to me why Alabama has more blacks in the legislature—

A. (Interrupting) They're of single member districts.

Q. They have a single member district?

A. Yes, sir.

Q. Is it a court ordered plan?

A. I believe so.

[261] Q. What about Louisiana, how many do they have?

A. I can't give you the exact number, but I've seen it at one time or another recently.

Q. How many does Arkansas have?

A. Arkansas has about four or five, I believe.

Q. I want you to tell—

A. (Interrupting) I don't have the figures—

Q. (Interrupting) You don't know?

A. I don't know for sure.

Q. Tennessee?

A. Several, I don't know the exact number. I, you know, personally met some from Memphis—

Q. (Interrupting) Do you know how many black office holders the the entire state of Tennessee has?

A. No.

Q. Do you know how it compares with Mississippi?

A. No, I don't.

Q. Do you know how any of those states I named compare with Mississippi in regard to black office holding?

A. No, I don't.

Q. Particularly Alabama?

A. No, I don't.

Q. All right, sir.

A. I do know how, you know, that there are more legislators in those states than there are in Mississippi.
[262] Q. But you don't know why?
A. Yes, I do, I stated why, single member districts.
Q. Single member districts?
BY MR. PARKER: Speak up.
BY THE WITNESS: Single member districts.

BY MR. SUMMER:

Q. Then,—
A. (Interrupting) The representation of homogenous groupings of people, a community of concern, you know, and they are districted differently. It seems that the Courts have ordered it in some of these other states and in some of the others that as I mentioned there has been a history of single member districts within the large municipalities and as they became black blacks began to be represented in the legislature.
Q. Are you an advocate of the single member district plan?
A. Yes, sir.
BY MR. SUMMER: Excuse me, if the Court please.
Q. Do you know of your own personal knowledge any difficulties, I believe you have already answered this [263] question, any difficulties of blacks in registering to vote, and I believe you answered, your previous answer was no. Do you know of any problem that the blacks may have in choosing the political party they desire to support?
A. There is no party registration in Mississippi so nobody knows what party you support.
Q. All right, sir. Do you know of any blacks who have been prevented from meaningly participating in political process of Mississippi or party activity?
A. Historically I do of my own personal knowledge and it is my—
Q. (Interrupting) Well then I will limit that, within the past five or six years?
A. Yes, I do. I know of people, yes, who have been denied the ballot—

Q. (Interrupting) Give us a specific, if you know tell us specifically what you know and who it involves and where it was involved.
A. I just don't happen to have that stuff with me.
Q. All right, sir. Do you know of any—
BY JUDGE COLEMAN: Just a minute, this is quite important. You are not able to recall it although you personally witnessed it?
[264] BY THE WITNESS: What he, I started to recall and then he pushed me on the Hollandale situation, he pushed me for such specifics that I hesitate to, you know, to do that kind of thing from memory. I am not going to be able to recall the name of the person, the exact reason why the person was excluded, what we, you know, subsequently investigated it, you know, the facts to be and what the final determination was by the Election Commission, I don't have all that stuff available here today.
BY JUDGE COLEMAN: Well let me just see if I can straighten this out a little bit in the interest of getting the facts if we can. I believe you have already testified that you have not witnessed anybody being denied the right to register on account of race, you say you have not seen that?
BY THE WITNESS: Not within the time restraints.
BY JUDGE COLEMAN: Which were?
BY THE WITNESS: Which were five to six years.
BY JUDGE COLEMAN: [265] All right. Now, number two, you say you have seen people, you have already testified about what went on in Hollandale and I understand what you testified too, I'm sure the other judges do, what other places have you seen actual discrimination on account of race practiced at the polls within the past five years, just the names of the places, you can remember that, I'm sure, without a memoranda.
BY THE WITNESS: I was in the Farmhaven polling place in—
BY JUDGE COLEMAN: All right, that's in Madison—
BY THE WITNESS: (Interrupting) That's in Madison County in 1972 general election.

BY JUDGE COLEMAN: That's a presidential election?

BY THE WITNESS: It was a presidential election and election commissioner election, and—

BY JUDGE COLEMAN: Now then the next place, just naming places only.

BY THE WITNESS: Those are all that within the time constraints that I personally witnessed the event.

[266] BY JUDGE COLEMAN: That would be Farmhaven—

BY THE WITNESS: (Interrupting) And Hollandale would be the most recent which I personally witnessed, yes, sir.

BY JUDGE COLEMAN: Now then I think he's told us enough about that, Mr. Attorney General. Let's move on to some other—

BY MR. SUMMER: I think that's all I want to know about that.

REDIRECT EXAMINATION

BY MR. PARKER:

Q. Do I understand your testimony to be, Mr. Barber, that there's no record in Mississippi of black people ever being excluded from the affairs of any political party?

A. No, that's not what I said.

Q. Have there been incidents that you know of of black people being excluded from political party affairs in Mississippi?

A. Are you asking me of my own personal knowledge?

Q. Well do you know as a matter of common knowledge?

A. As a matter of common knowledge blacks were excluded from the Democratic Party.

Q. Are you saying—

[267] BY MR. SUMMER: (Interrupting) If the Court please, I object to this because this was what I was trying to get around in my question. There's a lot of common knowledge on a whole lot of peoples part

that have it in different common form, and the reason I wanted to get him to answer directly was to get this business of common knowledge out of it and get down to some facts.

BY MR. PARKER: That's already been decided by the Fifth Circuit, Your Honor, in Riddell versus the Democratic Party.

BY JUDGE COLEMAN: If it has been decided as a matter of Court decision we are bound to take judicial notice of all of our own decisions so let's go on now, gentlemen, we've got into quibbling I think now.

BY MR. PARKER:

Q. Never been any racial gerrymandering of supervisors district lines in Mississippi?

A. I wasn't even asked that question.

Q. Well you were asked a question, broad question about denial of access to the political process and I'm asking you, did you understand and did you, did I understand your testimony to mean that there had never been any gerrymandering of supervisors district lines [268] in Mississippi?

A. Definitely not. I think there is a good deal of effective gerrymandering, I have looked at the beats in 1970 prior to the redistricting wave and I've looked at them again from a racial makeup subsequent to those redistrictings and to the best of my recollection I think I do have a file on that that shows that, let me check.

BY JUDGE COLEMAN: While you're looking for that I'll inform counsel that we are now advised officially that there is at this time or hasn't been recently any recording of the debates in the Mississippi Legislature. So what they once did some 15 years ago is probably not, there is no probability about it, it's not done anymore so we don't have any way of getting a recording of the debate or a transcript of the debate.

BY MR. PARKER: You may finish your answer.

BY THE WITNESS: Okay. That while I testified that there are about 40 beats now with what I think, what I would call an effective black majority there were in 1970 approximately twice that number and that they

have been, the lines have been moved around and changed so as to [269] decrease the number of beats that have black majority.

BY JUDGE COLEMAN: That's been done mostly pursuant to court order, hasn't it, or if it appeared to be wrong it was certainly challenged in the court. What I'm getting at is this, gentlemen, we are going into a lot of generalities here that's not going to help the Court to decide this case at all one way or the other and we know from knowledge of what's going on that most of the beat changes in Mississippi have occurred because somebody filed a protest under the one man one vote rule and forced them to be changed and they were changed, a lot of them by court order, some of them after they were made voluntarily were challenged in Court, such as the LeFlore County case for example that I happen to remember right offhand because I sat on the original phase of the case, and I don't see where we're getting anywhere with this. Why don't you go back, please, sir, to your proposition about what happened in the legislation and let's thrash that out.

BY MR. PARKER:

Q. We are discussing the Charlie Mitchell Floor Amendment Number 1 to House Bill 1290. Do you have your notes on that debate, Mr. Barber?

[270] A. I did, yes, sir.

BY MR. SUMMER: If the Court please, in the interest of time I want to make an objection to any conversation or anything that was said by any individual member on the floor of the House in regard to debate when 98 percent out of 100 percent of the debate is not going to be introduced here today. It is nothing more than an exchange between two individuals who may or may not have been mad at each other. We have no background on it whatsoever and I'm not going to object to it anymore because I don't want to take the Court's time.

BY JUDGE COLEMAN: All right, I'm going to overrule the objection and allow him to testify to his version of what took place with the understanding that

counsel would require him to tell what the other participants on the floor said about the matter and the other circumstances from which we can judge whether this remark really represents any valued legislative history or not. We don't have any recording of it or any transcript of it and I think it's a better policy to let him tell what he says he heard some member of the legislature say if he said it in the form of debate, not in some private conversation. Obviously the Court is not going [271] to look at this now through a peephole, we're going to get it all out.

BY MR. PARKER: Very well.

Q. House Floor Amendment Number 1 was authored by Representative Charles Mitchell was favored by seven members of the Hinds County Delegation, was a single member plan for Hinds County. Would you describe as best you can to the Court what each of the members of the legislature said on the floor of the House of Representatives on March 14, 1975 in support and against Representative Mitchell's Amendment?

A. Representative Mitchell introduced his amendment, he said that a majority of the delegation favored this plan and said that basically let us do it ourselves rather than have the Courts do it. Mr. Parkman was the next to speak and spoke in favor of the single member plan citing Clarion-Ledger poll as favoring single member districts and then he stated the real reason for this suit is race and this plan will in all likelihood give blacks control over three seats and that ought to take care of the matter. Representative Richardson spoke in favor of the Mitchell Amendment and just said he was in favor of it. Horace Lester spoke against it saying because if you cut up [272] Hinds County the rest of you are next. He also argued for continuity and seniority which is easier under the at large method. Representative Walters spoke for the Mitchell Amendment saying that we must redistrict ourselves. Representative Kent spoke against it because he stated that it set a bad precedent of dividing up the county. Representative Barefield spoke against it saying that it violated 158 years of history and that the issue is not

Hinds County but statewide and adopting this Amendment abandons all of us and invites the Court to order statewide single member districts. He stated that race was not considered by the committee. Representative Mitchell closed the debate by begging pardon for the introduction of race into the argument.

Q. What was the vote on the roll callback?

A. 22 to 84.

Q. The Amendment lost?

A. The Amendment lost.

BY MR. PARKER: No further questions. I'm sorry.

Q. Do you recall that 8 members of the Hinds County delegation, 8 of the 12 ended up voting for the amendment?

A. Yes, but I don't have my notes right here on the vote.

BY MR. PARKER: [273] No further questions.

BY JUDGE COLEMAN: These were all white people, of course?

BY THE WITNESS: Yes, they were.

BY JUDGE COLEMAN: Who favored the Amendment?

BY THE WITNESS: That's correct.

BY JUDGE COLEMAN: And the only person that mentioned race was who?

BY THE WITNESS: Howard Parkman.

BY JUDGE COLEMAN: And what was it he said about race?

BY THE WITNESS: He said that race was the critical issue, racial dilution was the critical issue before the Court and that we have to deal with it in the legislature and create some districts that are, that give blacks a chance to win. He stated that on two occasions on the floor also on the debate again on the, on final passage.

BY JUDGE COLEMAN: Now what else did he say, I want to be very careful and learn everything that he said as far as you can [274] recall it.

BY THE WITNESS: As far as I can recall he talked about a Clarion-Ledger poll that had been taken

at some recent time, one of those things on the front page where they so many people—

BY JUDGE COLEMAN: What was the question in the paper?

BY THE WITNESS: Do you favor single member districts? And he said that the majority in that poll did favor single member districts.

BY JUDGE COLEMAN: That was in Hinds County or did they take the poll from everywhere, or do you know?

BY THE WITNESS: I don't know how the Clarion-Ledger decides how to do that thing. He also said that he personally, you know, favored the single member district even though it may be more difficult for him to run a campaign.

BY JUDGE COLEMAN: Of course it saves all of them from running, if you carve Hinds County up into 12 districts that would eliminate 11/12ths of the area and of the population before whom they would have to submit their candidacies.

[275] BY THE WITNESS: True.

BY JUDGE COLEMAN: You have told us everything of any racial connotation?

BY THE WITNESS: No answer.

BY JUDGE COLEMAN: Mr. Barefield, the Chairman of the Committee, said that there wasn't any race involved.

BY THE WITNESS: Said it wasn't mentioned in committee.

BY JUDGE COLEMAN: Well.

BY JUDGE COX: Bill, did you get his answer? Did you get his answer, he was just nodding.

BY THE COURT REPORTER: No, sir, I can't watch him.

BY JUDGE COLEMAN: Well I'm sorry, I overlooked that. Would you kindly go back and take the questions to which you don't have any recorded answer, and Reverend speak out now instead of just nodding your head. You have to answer verbally so he can get it, please, sir.

BY THE COURT REPORTER: [276] You have told us everything of any racial connotation? That's what he didn't answer.

BY THE WITNESS: Yes.

BY JUDGE COLEMAN: Was that the only one?

BY THE COURT REPORTER: Yes, sir.

BY JUDGE COLEMAN: All right. Anything further gentlemen of this witness?

BY MR. SUMMER: We have nothing.

BY JUDGE COLEMAN: All right.

BY MR. PARKER: Nothing further, Your Honor.

BY JUDGE COLEMAN: You may be excused. Who do you have next?

[Exhibits Omitted]

* * * *

HENRY J. KIRKSEY

* * * *

[277] BY MR. PARKER: Plaintiffs call Henry J. Kirksey.

HENRY J. KIRKSEY called as a witness for and on behalf of Plaintiffs, was sworn and testified as follows:

DIRECT EXAMINATION

BY JUDGE COLEMAN: Now we have the deposition of Mr. Kirksey so we will observe the same rule as to him that we have as to the others.

BY MR. PARKER:

Q. You are, give you name and address for the record please, Mr. Kirksey.

A. Henry J. Kirksey, 1123 Robinson Street, Jackson, Mississippi.

Q. You are the Henry J. Kirksey who is one of the plaintiffs in this case?

A. I am.

Q. Are you a registered voter in Mississippi in Hinds County?

A. I am.

Q. Have you been a candidate for the Mississippi Legislature?

A. I have.

Q. When and for what post?

A. 1971. Senate post 5.

[278] Q. And you were successful or defeated?

A. Defeated.

Q. Do you have a copy of your proposed alternative single member redistricting plan?

A. Yes, I do.

Q. Would you hand it to the Clerk please, one for the House and one for the Senate.

(Witness did.)

BY MR. PARKER: Ask that these be admitted in evidence, Your Honor. These were covered in the deposition testimony.

BY JUDGE COLEMAN: All right.

BY DEPUTY CLERK: As one exhibit or two?

BY MR. PARKER: Two separate exhibits if we may, please maam.

(Above referred proposed redistricting plan for Senate received in evidence and marked Plaintiff's Exhibit 32.)

(Above referred to proposed redistricting plan for House received in evidence and marked Plaintiffs' Exhibit 33.)

BY MR. PARKER:

Q. Now, Mr. Kirksey, have you analyzed House Bill 1290 and Senate Bill 2976 as they effect legislative redistrict- in Harrison and Jackson Counties?

[279] A. Yes, I have.

Q. In Harrison County House Bill 1290 provides for one by supervisors districts and two at large. Have you examined the census data on the supervisors districts of Harrison County to determine whether or not they are equal in population?

A. I have.

Q. And would you tell us according to the 1970 census the population of each supervisors district currently in Harrison County?

A. Beginning with beat one population 23,151, and if I may I will give a percentage which is a percent of the norm. The norm for Harrison County is 26,914.4, so that beat one has a population 23,151 minus 13.99%. Beat two has a population of 31,480 and a plus 16.96%. Beat three has a population of 17,276 and a minus 35.83%. Beat four has a population of 21,082 and its a minus 21.67%. Beat five has a population of 41,593 and that would be a plus 54.54%. Now that is a spread from the minus to the plus of 90.35% difference.

Q. That's a total deviation in the current supervisors districts of Harrison County of 90.35%?

A. Yes.

Q. Now, have you examined the supervisors districts in Jackson County as they were currently constituted to [280] determine whether those supervisors districts are properly apportioned?

A. Jackson County was redistricted after the 1970 disemiual census of population, thus the present districts, that is it is not possible to determine the population of the present districts since enumeration districts are split by the current or the current redistricting of that county. I can give you figures for 1970 based on the preexisting.

Q. Those preplexing districts are no longer relevant?

A. Right. Now I would point out though further that the redistricting of Jackson County I believe by Judge Russell was done on the basis of registered voters rather than population.

Q. Earlier testimony—

BY JUDGE COLEMAN: May I intervene there to ask you to give us the figures as to the registered voters in each of the five districts of Jackson County as redistricted by the United States District Court?

BY THE WITNESS: I do not have those. I was in Pascagoula and the cost they quoted me for getting that was prohibitive so I did not get those figures.

BY JUDGE RUSSELL: [281] I think I can state as well as I remember that was an agreed order between

all the parties. There was no hearing I don't believe held on it.

BY JUDGE COLEMAN: Well now who were the parties to that litigation, were there black people represented in that settlement, who brought the suit and so forth?

BY JUDGE RUSSELL: I don't recall.

BY JUDGE COLEMAN: You don't recall that. Would the court's decree in the case reflect the population of the counties by beats of voting age?

BY JUDGE RUSSELL: I would assume so.

BY MR. PARKER:

Q. Mr. Kirksey, earlier in the testimony counsel for the state read the results of the votes senatorial and house races in Hinds County indicating you had gotten about 10,000 votes. Would you tell the court please how much you spent on your entire campaign?

A. Between 75 and $85.00 that was given to me either one or two, two days prior to the election. I attempted to get some radio coverage and found that all the stations were scheduled through the election. I did manage to [282] get some spot announcements through WOKJ and that extended on into election day and were not in any form or fashion near what you would call prime time. That would mean after midnight or anytime that they found a spot that they could get me. I would further state in connection with my campaign that I appeared not more than half a dozen times with people who were campaigning. I gave other candidates some cards of mine to hand out. I was working at the time in the Evers campaign primarily or doing work for Evers. I did not campaign in the true sense of the word I never asked anyone to vote for me so that the blacks who voted for me voted primarily because my name was on a list of predominantly black candidates that was circulated.

Q. Now, would you tell the court based on your own experience whether there are any disadvantages to black candidates running in Hinds County in terms of finances and having to run for those senate seates on an at large countywide basis?

A. Well strictly its a tremendous undertaking financially. The easiest way and very best way to campaign would be by television. The next in my view would be radio as a convenient was for people to whether they read well or not to learn who the candidates are. The next best way would be through the newspaper, that is announcements in [283] newspaper and then finally through all kinds of printed matter, and I said finally but the final problem would be the means that requires the hardest amount of work and the longest time to complete would be the sort of door to door campaigning, a grass root kind of campaign.

Q. Do at large districts then create any special disadvantages to black people?

A. Very definitely. Blacks have the very lowest income level in all the states for that matter.

Q. You think it would be better if we had single member districts?

A. Very definitely so because it would limit the both the square mile area for campaigning and in most cases, that's not exactly true overall, there are some sparsely populated areas where that would not, that would not work, but blacks are in certain areas of the states are are highly concentrated so that we are talking about in the City of Jackson would be some four or five districts and possibly two senate districts and that would mean a minimum area of campaigning and whether or not the candidates were able to buy radio or television time would really not be too significant.

Q. And how many, in your plan, in your proposed plan, in how many house districts do you think the votes of the [284] black voters would be decisive?

A. I would have to give you an estimate.

Q. Yes.

A. About a day ago you asked me to do an analysis on that. I had not done it before because I felt I knew enough about the distribution of the black population in the state to estimate by simply looking at the map to determine that. Now, I would think that there was under my plan some 20, well, let me state it, Mr. Parker,

in terms of what I consider to be districts where blacks would most likely elect.

Q. We are talking about districts where black voters would be able to elect legislators of their choice?

A. Right. I would think that there's a dozen or more.

Q. A dozen or more?

A. Yes.

Q. How about in your senate plan?

A. Not more than four or five at the most.

BY MR. PARKER: No further questions, Your Honor.

CROSS EXAMINATION

BY MR. SUMMER:

Q. Mr. Kirksey, you are the same gentleman that was the plaintiff in the Kirksey v. Board of Superivsors of Hinds County were you not?

[285] A. That's correct.

Q. And you are a plaintiff in this lawsuit, is that correct?

A. That's correct.

Q. And you represent the classes in both lawsuits do you not?

A. That's correct.

Q. And they are the same class of people are they not?

A. Correct.

Q. So much of the testimony in regard to what you have just testified to all of it was testified previously in the Kirksey v. Board of Supervisors case was it not?

BY MR. PARKER: We object, Your Honor. That didn't have anything to do legislative districts. That had to do with supervisors districts.

BY JUDGE COLEMAN: That's all true but now the legislature has directed that these men be elected by the supervisors districts and we have been talking about it all day so I think we better let him answer it.

BY MR. SUMMER:

Q. What was your answer, sir?

A. Now you will have to restate your question.

Q. All right sir. Now I have forgotten my question.

BY JUDGE COLEMAN: [286] Well, I didn't think it really was too significant. You asked him if he hadn't given most of the testimony in the county case that he was offering here today.

BY MR. SUMMER: I see. I see. Well, we will pass on from that.

Q. You mentioned something that interested me, Mr. Kirksey, about you a list upon which you were listed and got over 10,000 votes you thought because of and said I believe that that list contained the names of predominantly black candidates and was presented in and around the black community as the candidates for them to vote for, is that correct sir?

A. I think normally you call that a sample ballot thing.

Q. All right, but what was the purpose of it?

A. It was for the purpose of getting people out to vote.

Q. Did it have any racial connotation at all?

A. Just names of people and I can tell you more specifically what the source was, was voters league, I believe that's the, not voters league, its organization that's being reactivated currently, and the Charlie Evers headquarters the two groups got together and decided on who they would like to have on the ballot with themselves, that is all those candidates.

Q. I see.

A. And I was included in that bunch.

[287] Q. So you were very fortunate to get included upon that list at that time in view of the fact that you only had 75 or $80.00 to spend on your other compaign?

A. Correct.

Q. And you were in the Evers campaign and participated strongly in that campaign?

A. Now that would be a misstatement.

Q. I understood you to say that?

A. Now I worked for, I developed material, campaign material, that means that nobody saw me working for Evers.

Q. And so while you were running for the senate they really didn't know that you were working for Evers?

A. In fact Mr. Evers didn't even know I was running for the senate until half way through the campaign because I wasn't really doing an effective job of campaigning.

Q. But who did this list go to, where was it handed out?

A. It was just generally handed out in the black community of Jackson and I am not saying that it was limited to that because I don't know specifically who it was delivered to.

Q. Yes sir.

A. But I do know that an attempt was made to deliver that sample ballot throughout the county and I do know that it was delivered in Jackson because I received some of [288] them myself.

Q. Would you have objected had a list of white candidates been prepared and passed out among the white community as the people to vote for in the block vote?

A. I am, uhh, there was nothing on that ballot first sample ballot first of all that said anything about a block vote. The democratic party always list a number of their candidates out and it is the same kind of thing, the republicans do the very same thing. This was an organization plus the gubernatorial candidate, Evers, passing out a sample ballot that they wanted the people to see and to react to favorably.

Q. You talking about the Loyalist Democratic Party?

A. No, no.

BY JUDGE COLEMAN: You were running in the general election were you not?

BY THE WITNESS: Running in the general election as an independent.

BY JUDGE COLEMAN: The November election, so you were running against the democratic nominees I suppose?

BY THE WITNESS: I am not sure that they were all democrats because there was a democrat, Jean Muirhead, the incumbent at the time.

[289] BY JUDGE COLEMAN: Who did you run against?

BY THE WITNESS: Jean Muirhead and—

BY JUDGE COLEMAN: Well she was republican wasn't she?

BY THE WITNESS: Well I believe so but she had previously been a democrat.

BY JUDGE COLEMAN: She was running as a republican.

BY THE WITNESS: Don Spann was the other candidate.

BY JUDGE COLEMAN: So you were running against a republican and a democrat?

BY THE WITNESS: Correct.

BY JUDGE COLEMAN: Three candidates?

BY THE WITNESS: Correct.

BY JUDGE COLEMAN: And you got 10,000 votes on $80.00 of expense money. You need to show a lot of the rest of the people how to [290] operate inexpensive campaigns, getting 10,000 votes for $80.00 worth of expenditures, that's pretty good.

BY THE WITNESS: Well, I think in all fairness if I might respond to that in all fairness I appeared on television announcing my candidacy with Jean Muirhead, it was a free thing, and I appeared at least two other times in public and spoke briefly, maybe half a minute or so during the Evers campaign. Now, I believe that to the best of my recollection with possibly two other appearances with smaller groups that was the extent.

BY JUDGE COLEMAN: I just wonder how many votes Mrs. Muirhead and Spann, you say the other man's name is Spann?

BY THE WITNESS: Yes sir.

BY JUDGE COLEMAN: How many votes did they get?

BY THE WITNESS: I believe Spann's vote, and I'm guessing, I can't be accurate, it was in excess of 30,000 I believe.

BY JUDGE COLEMAN: That he got?

BY THE WITNESS: Yes sir.

[291] BY JUDGE COLEMAN: He was democratic nominee?

BY THE WITNESS: Yes sir.

BY JUDGE COLEMAN: How many votes did the republican get?

BY THE WITNESS: Somewhere between the two of us, but more closely to Don Spann than to my level.

BY JUDGE COLEMAN: But you got 10,000 votes and how many black qualified electors were there in Hinds County?

BY THE WITNESS: I have a list that I obtained in 1971 for the City of Jackson and in the City of Jackson the voter registration is done on the basis of race by sight. If you should happen to have been a dark complexioned white person you would be listed as black, and if you were a light complexioned black person you would be likely be listed as white.

BY JUDGE COLEMAN: Suppose that balances out fairly well?

BY THE WITNESS: Maybe it does, I don't really know, but what I want to explain is that in the City of Jackson system is to [292] indicate the race with numbers beginning with white males as one, white female two, black male as three, black female as four, so that I have the print out of the voter registration in the City of Jackson to April, 1971, and my count of that, they would not give me a count from the city, in fact I had been asked by Mr. Parker to get a count by race from the city and from the county, and whereas the city did not refuse they said they did not have the time and the county said it was impossible because they didn't know, but the point that I am trying to make is that when I calculated the vote, and that means that I did it by hand, and my registration count was in excess something very close to 17,000 for the City of Jackson blacks.

BY JUDGE COLEMAN: But you got 10,000 votes in the whole county?

BY THE WITNESS: Very minimal outside the City of Jackson. Most of my votes came from the City of Jackson. I carried every black majority precinct.

BY JUDGE COLEMAN: How did you do in some of the white precincts?

BY THE WITNESS: I got about the same vote that Evers and Evers got, we got uhh somewhere something less than about 2%, and [293] that does, from my own point of view you can't accurately assess what that means because there are some precincts that are 100% white, there are some that are 100% black, in those precincts, white precincts that are knowing, that is according to the 1970 census are 100% white I received perhaps about the same number of votes that I received in those that had say 1 or 2% black.

BY JUDGE COLEMAN: What I am getting at though is that out of 17,000 qualified black electors in the City of Jackson and after a slate had been circulated you got 10 out of the 17,000?

BY THE WITNESS: Yes sir.

BY MR. SUMMER:

Q. I have heard the figure 34,000 banded around in many hearings here and before the U.S. Congressional Committees as being the number of qualified black electers in Hinds County. Would you quarrel with that figure now?

A. I would.

Q. Huh?

A. I would. Now of what date, maybe I better qualify that?

Q. As of today?

[294] A. Well, I wouldn't quarrel because I don't know what it is today. My figures are for, as I said before, April 1971.

Q. You have run in how many races, Mr. Kirksey?

A. One.

Q. One race?

A. First and the last for me.

Q. How many times have you voted?

A. I have voted in every election from the time that I qualified in Hinds County. I wouldn't say every one, I can't swear that's a fact, but I have voted in most

elections since 1961 when I moved to Hinds County, and I have missed a few.

Q. And you have appeared on television with the other candidates, black and white?

A. You make that sound very important. It was like this is Jean Muirhead and this is Henry Kirksey, you give your name, that kind of thing, very briefly.

Q. Same thing they got, they got no more and no less than what you got, is that correct?

A. Uhh, not everyone is entitled to because some refused it because it had, uhh, one of the provisions was that you would answer some questions by the reporter and some people didn't want to answer those questions.

Q. That was a political decision they made?

[295] A. Yes.

Q. They had the opportunity to be there if they had wanted to?

A. Yes sir.

Q. And were willing to answer the questions. Then you have had no problem in participating in the political processes of Mississippi?

A. Hinds County, no. I am originally from Lee County.

Q. How long have you been in Hinds County?

A. Since 1961.

Q. So you have had no problem since 1961 participating in the political process?

A. No, not personally.

BY MR. SUMMER: I believe that's all.

REDIRECT EXAMINATION

BY MR. PARKER:

Q. Mr. Kirksey, there was one other thing. Did I ask you to draw a series of maps showing combination of black majority counties and white majority counties under the house plan and the senate plan?

A. You did.

Q. Ask you to identify these please. Are these those maps?

A. Yes, they are.

Q. And these are based on 1970 census data?
[296] A. Correct.
BY MR. PARKER: I ask that these maps be admitted in evidence, Your Honor, as illustrating the point made.
BY JUDGE COLEMAN: They may be.

(Received in evidence and marked Plaintiffs' Exhibit 34.)

BY MR. PARKER: No further questions.
BY JUDGE COLEMAN: Mr. Kirksey, in reading either the committee report or the bill one or the bills providing for this legislative reapportionment it is said that Hurricane Camille so disrupted the population status of Harrison County that the District Court, the United States District Court for the Southern District of Mississippi, had declined an effort to reapportion Harrison County, and that left the legislature with no current information to travel on. I haven't heard any evidence about that or nobody seems to challenge that proposition, and most everybody knows what Hurricane Camille did to Harrison County and I am sorry of course that it happened. What do you have to say on that point, maybe it being they say the worst hurricane to ever strike the American Continent in recorded history maybe that was basis enough for the [297] District Judge in the exercise of his discretion to decline to reapportion that county until such time as he had a stable population to act on. Do you know anything at all about that?
BY THE WITNESS: I couldn't comment as to, well, let me try it this way.
BY JUDGE COLEMAN: All right.
BY THE WITNESS: The census data indicates the housing also. I did not go but I could have gone further into the types of housing which would in all probability would have been indicative of temporary structures in some cases to indicate that these were people who were displaced by the hurricane. I didn't see a thing in the census data to indicate that these were temporary situations with the people.

BY JUDGE COLEMAN: I think that we would be entitled to take judicial notice of what the United States District Court found about that. I don't believe anybody has made that available but I suppose that I should direct counsel for somebody, I guess the defendants, to make the disposition of the District Court on that available to us. We are sitting as a District Court ourselves and [298] in this district. I notice that is what the legislature says about it. I would rather see what the court said about it. That's just as to Harrison County.
BY JUDGE RUSSELL: There have been some statistics gathered because they have been published in the newspaper do there that there has been a shift of population.
BY JUDGE COX: Who handled that?
BY JUDGE COLEMAN: Before Judge Nixon.
BY JUDGE RUSSELL: There has been some statistics since the hurricane in the newspaper and the court could take judicial notice of that. Those of us who live down there have more than judicial knowledge. We sweated it out.
BY JUDGE COLEMAN: Anything further of this witness?
BY MR. SUMMER: Nothing.
BY MR. PARKER: Nothing further of Mr. Kirksey.
BY JUDGE COLEMAN: All right, sir, you are excused.

(Witness excused.)

[Exhibits Omitted]

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IN THE
UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

Civil Action No. 3830A

[Filed Jun. 11, 1975]

PEGGY J. CONNOR, ET AL., PLAINTIFFS

v.

WILLIAM L. WALLER, ET AL., DEFENDANTS

AND

UNITED STATES OF AMERICA, PLAINTIFF-INTERVENOR

ORDER

Upon motion of the United States, and the Court having been advised of the premises, it is hereby

ORDERED, ADJUDGED AND DECREED that the United States of America be hereby allowed to intervene as party plaintiff in the above captioned matter.

ORDERED, this June 11, A.D., 1975.

/s/ Harold Cox
United States District Judge

June 11, 1975

IN THE
UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

Civil Action No. 3830A

[Filed June 11, 1975]

PEGGY J. CONNOR, ET AL., PLAINTIFFS

v.

WILLIAM L. WALLER, ET AL., DEFENDANTS

AND

UNITED STATES OF AMERICA, PLAINTIFF-INTERVENOR

COMPLAINT IN INTERVENTION

The United States of America alleges:

1. The Attorney General brings this action on behalf of the United States of America pursuant to 42 U.S.C. 1971(a)(1), 1971(c), 1973, 1973(c), 1973j(d) and 2000h-2, and in order to secure rights guaranteed by the Fourteenth and Fifteenth Amendments to the United States Constitution.

2. This Court has jurisdiction of this action pursuant to 42 U.S.C. 1971(d), and 1973j(f) and 28 U.S.C. 1343, 1345, and 2201. A three-judge court is required pursuant to 42 U.S.C. 1973(c) and 28 U.S.C. 2281.

3a. Defendant William L. Waller is Governor of Mississippi. Pursuant to Title 23, Code of Mississippi, 1972, he has the duty to commission all persons certified by the Secretary of State as duly elected to the office such person sought except for state officers as provided in the Mississippi Constitution, Article 5, Sections 140 and 142.

b. Defendant A. F. Summer is Attorney General of Mississippi and, as such, is the chief legal officer of the State of Mississippi. Mississippi Constitution, Article 6, Section 173.

c. Heber Ladner is Secretary of State of Mississippi and has the duty pursuant to Title 23, Code of Mississippi, 1972, to ascertain the person receiving the highest number of votes for election to office, other than state officers as provided in Mississippi Constitution, Article 5, Sections 140 and 142, declaring the person duly elected to each such office and certifying the election of such person to the Governor.

d. William Waller, Governor, A. F. Summer, Attorney General, and Heber Ladner, Secretary of State, are members of the State Board of Election Commissioners. 23-5-1 Code of Mississippi, 1972. As such, they have the responsibilities set forth in Title 23, Code of Mississippi, 1972, for conducting the elections of members of the House of Representatives and the Senate of the State of Mississippi.

4. The provisions of Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, apply to the State of Mississippi.

5. House Bill No. 1290 and Senate Bill No. 2976, Mississippi Laws, 1975 Regular Session, were enacted by the 1975 Regular Session of the Mississippi Legislature and signed and approved by Governor William L. Waller on April 8, 1975, and April 7, 1975, respectively, thereby becoming the law of the State of Mississippi pursuant to Mississippi Constitution, Article 4, Section 72. Together they constitute a legislative redistricting plan for the Mississippi House of Representatives and Mississippi Senate which alter and change the prior districts in effect.

6. House Bill 1290 and Senate Bill 2976, Mississippi Laws, 1975 Regular Session, constitute a standard, practice or procedure with respect to voting different from that in force or effect on November 1, 1964, within the meaning of Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c, as amended.

7. Defendants have not, as provided by Section 5 of the Voting Rights Act, obtained a declaratory judgment from the United States District Court for the District of Columbia declaring that the qualification, prerequisite, standard, practice or procedure described in the next

preceding paragraph does not have the purpose or effect of denying or abridging the right to vote on account of race or color. On June 9, 1975, a submission of House Bill 1290 and Senate Bill 2976 was made to the United States Attorney General for review under Section 5 of the Voting Rights Act of 1965 and on June 10, 1975, an objection was interposed.

8. On June 5, 1975, the United States Supreme Court declared that House Bill 1290 and Senate Bill 2976 "are not now and will not be effective as laws until and unless cleared pursuant to § 5." *Connor* v. *Waller*, No. 74-1509 (June 5, 1975).

9. The apportionment plans last used by the State of Mississippi, for its legislative elections, in 1971, were ordered into effect by the district court and subsequently vacated by the Supreme Court, except insofar as they applied to the 1971 elections. *Connor* v. *Williams*, 404 U.S. 549 (1972).

10. The apportionment plans adopted by the Mississippi legislature just prior to the plans described in the next preceding paragraph were struck down by the district court for failing to meet Fourteenth and Fifteenth Amendment requirements.

11. Except for another interim redistricting plan ordered by the district court for the 1967 elections, 265 F. Supp. 492, the apportionment plan in effect immediately prior to the adoption of the plans described in the next preceding paragraph was malapportioned under the Fourteenth Amendment and would therefore be invalid for use in the 1975 elections.

12. The defendants have indicated their intention to utilize the now nullified plans described in paragraph 9 above for the 1975 Mississippi legislative elections.

WHEREFORE, plaintiff prays that this cause be set for an expeditious hearing and that a court of three judges hear this action pursuant to 28 U.S.C. 2284 and Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c, and thereafter issue a judgment:

(a) Enjoining defendants, their agents and successors in office, and all persons acting in concert with

any of them from administering, executing or enforcing any of the provisions of House Bill 1290 and Senate Bill 2976, Mississippi Laws, 1975 Regular Session, unless and until such statutes have been cleared pursuant to Section 5 of the Voting Rights Act of 1965.

(b) Enjoining defendants, their agents and successors in office, and all persons acting in concert with any of them, from administering, executing or enforcing any apportionment plan for the House of Representatives or Senate of the State of Mississippi that is not in compliance with the Voting Rights Act of 1965.

(c) Enjoining any effort to implement for the 1975 elections the plans of apportionment used in the 1971 elections.

(d) Ordering the implementation of a plan apportioning the House of Representatives and the Senate for the State of Mississippi for the elections scheduled to be held in 1975 and thereafter or until the legislature of the State of Mississippi enacts an apportionment plan for the House of Representatives and Senate of the State of Mississippi that meets the requirements of Section 5 of the Voting Rights Act of 1965.

Plaintiff further prays that this Court grant such additional relief as the interest of justice may require, together with costs and disbursements of this action.

/s/ Edward H. Levi
EDWARD H. LEVI
Attorney General

/s/ J. Sanley Pottinger
J. STANLEY POTTINGER
Assistant Attorney General

/s/ Robert E. Hauberg
ROBERT E. HAUBERG
United States Attorney

/s/ Gerald W. Jones
GERALD W. JONES
Attorney
Department of Justice
Washington, D.C. 20530

/s/ Michael D. Johnson
MICHAEL D. JOHNSON
Attorney
Department of Justice
Washington, D.C. 20530

CERTIFICATE OF THE ATTORNEY GENERAL OF THE UNITED STATES

I, Edward H. Levi, Attorney General of the United States, hereby certify that the case of *Connor, et al* v. *William L. Waller, et al.*, Civil Action No. 3830A, now pending in the United States District Court for the Southern District of Mississippi, in which relief is sought from the denial of equal protection of the laws based on race or color, is a case of general public importance within the meaning of Section 902 of the Civil Rights Act of 1964.

Signed this 10th day of June, 1975.

/s/ Edward H. Levi
EDWARD H. LEVI
Attorney General

[Certificate of Service Omitted]

* * * *

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI JACKSON DIVISION

Civil Action No. 3830A

ANALYSIS OF HOUSE BILL 1290 AND SENATE BILL 2976 BY THE UNITED STATES

[Caption Omitted]

[Submitted to Court June 20, 1975]

ANALYSIS OF HOUSE BILL 1290

House Bill 1290 utilizes a combination of single-member districts, multi-member districts and floterial districts. There are both single-county and multi-county combinations in each of these groups. In analyzing House Bill 1290, consideration was given to the effect on black voting strength of using these various type of districts, the particular combination of counties used, and the use of county boundaries as the minimum building block for districts. Using these considerations, we found Districts 3, 9, 13-15, 17, 23, 24, 28-34, 37, 39, 40 and 46 to be objectionable. Many other districts which we did not find objectionable in and of themselves insofar as Section 5 considerations were concerned, we did find to be seriously malportioned and/or have to be altered in order to eliminate the dilution of black voting strength existent in the objectionable districts. Accordingly, the alternative attached hereto as Appendix A leaves only District 90 (Tate County) intact.

None of the eleven single-county single-member districts[1] nor the two multi-county single-member districts[2] are objectionable.

House Bill 1290 creates two single-county floterial districts: District 31 (Hinds County) and District 45 (Harrison County). Both of these counties are counties for which the Supreme Court has directed the creation of

[1] Districts 5-7, 10, 12, 19, 20, 22, 36, 41 and 44.

[2] Districts 21 and 42.

single-member districts. Without suggesting a result different from that required by the Supreme Court, our analysis indicates that District 45 is not, in and of itself, objectionable. District 31 we found clearly objectionable because the 84,000 blacks in Hinds County are submerged into five districts all of which have a majority white VAP, and in such circumstances, their potential to elect representatives of their choice is not only minimized but effectually cancelled out.

Likewise, most of the single-county multi-member districts [3] were found to be objectionable. Our analysis indicates that although Bolivar (District 14) has a majority black VAP, black voting strength is diluted by requiring the election of representatives at large particularly in the context of the majority vote requirement for primary elections, the numbered post provision, and the full slate requirements. In District 33, the substantial black population concentration located in Natchez and the adjoining portions of northwestern Adams County are submerged into the greater white population of the remainder of the county. Likewise, the black population concentrations in Laurel and Jones County (District 40) is submerged in a significantly greater white concentration throughout the remainder of Jones County thereby reducing their potential impact on the choice of a representative. The black concentrated area of Laurel is geographically divided from the remainder of Laurel by a railroad right of way and the use of a single-member district plan which contains a district in Laurel and adjoining portions of Jones County would avoid dilution of black voting strength in that area.

House Bill 1290 also creates seven multi-county floterial districts. Although the use of such floterial districts is not *per se* objectionable, it does create serious difficulties, one of which is to substantially increase the deviation from one-man one-vote. See attached Chart 2 for the deviations in these districts.

In addition to deviation difficulties, Districts 25 and 28 significantly dilute black voting strength. District 25

[3] Districts 13, 14, 33 and 40.

combines majority black Noxubee County, which has a population only 3,900 less than the norm for one district, with the much larger white majority counties of Lowndes and Oktibbeha. Southeastern Oktibbeha County, southern Lowndes County, and Kemper County to the south of Noxubee County all have significant black population concentrations sufficient for the establishment of a single-member district with a majority black VAP if combined with Noxubee County.

District 28, likewise, combines majority black Madison County with the much larger and heavily white county of Rankin. Madison County with a majority black VAP elects one of the four representatives and contains 40% of the electorate for the fourth representative, but is substantially under-represented (14.19%) while Rankin County, which elects two representatives and contains 60% of the electorate for the fourth representative, is over represented (7.45%). A single-member district plan would avoid the deviation problems and the dilution problems.

By far the greatest number of the districts established by House Bill 1290 are multi-county, multi-member districts.[4] Districts 3, 9, 24, 30 and 37 all combine majority black counties with majority white counties to create white majority districts. The use of a single-member district plan would avoid this dilution unless they were gerrymandered to divide black population concentrations.

Districts 15, 29 and 34, combine black majority VAP counties with white majority VAP counties resulting in districts with majority white VAPs despite substantial black populations. A single-member district plan would avoid this dilution.

Districts 17 and 32 combine a black majority county with a county with a marginal black majority percentage. Both results in districts with an approximately 50% white VAP thereby reducing the potential voting strength of blacks. When compared to the likely result if single-member districts were used, it becomes apparent that

[4] Districts 2, 3, 8, 9, 15-18, 24, 26, 27, 29, 30, 32, 34, 37-39, 43 and 46.

the use of multi-member districts in these areas has a dilutive effect on black voting strength.

Finally, Districts 39 and 46 are objectionable because of the submergence of a significant black population concentration located entirely within a county (South Hattiesburg in Forrest County and Moss Point in Jackson County) into a large multi-member district. Both South Hattiesburg and Moss Point have sufficient population to meet the norm for a district and both would have substantially greater potential voting strength for blacks then the existent districts. The submergence of these areas in multi-member districts containing two entire counties with a very low overall black population percentage dilutes the potential black voting strength.

The remaining multi-county, multi-member districts are not objectionable.

STATE SENATE PLAN -- HOUSE

DISTRICT NO.	DESCRIPTION	TOTAL POP.	% DEVIATION
1	Tishomingo County: All Alcorn County SD 1, 3, 4	18,378	+1.12
2	Alcorn County ED 2, 5-14, 19-24, 26,27	18,006	-0.90
3	Prentiss County SD 1, 3-5	18,113	-0.31
4	Prentiss County SD 2 Alcorn County SD 3, 5, ED 15, 25 Tippah County SD 1, 4, 5, ED 8-10, 14	18,437	+1.46
5	Tippah County SD 3, ED 11-13 Benton County: All Marshall County SD 2, 5	18,521	+1.92
6	Marshall County SD 1, 3, 4	18,184	+0.07
7	DeSoto County SD 2, ED 1-3	18,103	-0.36
8	DeSoto County SD 1 LESS ED 1-3 SD 3-5	17,780	-2.15
9	Tate County: All	18,544	+2.05
10	Quitman County SD 2-5 ED 5-6 Coahoma County SD 1 ED 5-7	18,129	-0.23
11	Coahoma County SD 2, 5, ED 7-8, 22-24, 39-46	18,434	+1.45
12	Coahoma County ED 16-21, 25-38	18,286	+0 63
13	Tunica County: All Quitman County: SD 1 Less ED 5-6 Panola County ED 6-9	18,026	-0.79
14	Panola County ED 1, 3-5, 10-20, 26, 28-31	18,194	+0.13
15	Yalobusha: All Panola ED's 2, 24, 25, 27 SD 4 Lafayette ED 16, 168	18,906	+4.04

16	Lafayette County ED 2, 3, 5, 9-11	18,506	+1.66
17	Lafayette County ED 5, 7, 15, 17, 21, 22 Calhoun County SD 1-3 SD 4: All LESS ED 21 SD 5: ALL LESS ED 16 Pontotoc County ED 4, 11, 13	18,273	+0.56
18	Calckaieu County ALL LESS ED 6, 7, 21 Calhoun County ED 16, 21 Lee County SD 39, 43	17,303	-2.02
19	Pontotoc County ALL LESS ED 9, 11, 12 Union County ED 17, 18 Lee County ED 38	18,569	+2.19
20	Union County: ALL LESS ED 17, 18 Lee County ED 2, 5	18,235	+0.35
21	Itawamba County: All Lee County ED 36	18,287	+0.64
22	Lee County SD 2 ED 1, 3, 4, 10-16, 26-29	18,525	+1.95
23	Lee County ED 17-25, 30, 31-35, 37	18,369	+1.08
24	Monroe County SD 4, ED 17 Clay County ED 21, 22, 27, 28 Lowndes County ED 42-45 Oktibbeha County ED 2	17,344	-4.55
25	Monroe County ED 2-8, 11-16, 18 Lee County ED 40-42	17,953	-1.19
26	Monroe County SD 2, 3; ED 1, 9, 10 Lowndes County SD 1	18,339	+0.92
27	Lowndes County Columbus ALL LESS ED 17, 18, 20	17,950	-1.22
28	Lowndes County SD 3, ED 17, 18, 26, 27-32	18,192	+0.11
29	Tallahatchie County ALL LESS ED 17-20 Grenada County ED 3	17,809	-1.99

30	Grenada County SD 1, 3, 4, ED 4	17,548	-3.43
31	Bolivar County SD 1, 3, ED 18-20, 24, 34-35B, 52-53	18,390	+1.70
32	Bolivar County ED 33, 54-57	18,293	+0.47
33	Sunflower County SD 5, SD 4 LESS ED 22; ED 25, 28, 40	18,131	-0.22
34	Leflore County SD 1, 2, 4, 5, ED 35 Tallahatchie County ED 17-20	17,964	-1.14
35	Sunflower County: Remainder LESS ED 22	18,143	-0.16
36	Bolivar County SD 2 LESS ED 24 SD 5, SD 4 LESS 33, 54-57 Sunflower County ED 22 Washington County ED 51, 53-55, 6-7, 9	18,367	+1.07
37	Washington County ED 1-4, 8, 10, 11, 41-42, 48-49, 52, 56-62, 71, 9900	18,031	-0.77
38	Leflore County ED 11-29, 36	18,022	-0.82
39	Carroll County: ALL Leflore County ED 30-34, 37, 38	18,033	-0.75
40	Washington County ED 12-19, 21, 39-40, 43-47	18,321	+0.82
41	Washington County ED 20, 22-38, 50	18,025	-0.81
42	Attala County ALL LESS ED 1-3	18,002	-0.97
43	Montgomery County: ALL Grenada County ED 21 Attala County ED 1-3	17,424	-4.11
44	Issaquena County SD 5 Sharkey County SD 3, ED 1-7 Washington County SD 1, 2, 5 LESS ED 70-71 ED 5	18,538	+2.01
45	Choctaw County: ALL Webster County: ALL	18,487	+1.74
46	Clay County ALL LESS 21, 22, 27, 28 Chickasaw County ED 6, 7, 21	18,150	-0.11

47	Oktibbeha County ED 1, 4-13, 15, 16, 18	18,401	+1.27
48	Winston County: ALL	18,406	+1.29
49	Oktibbeha County SD 4, 5, 3 LESS ED 18; ED 7, 13, 14 Lowndes County SD 1, 5, ED 9 Lowndes County SD 4	17,922	-1.37
50	Kemper County: ALL Neshoba County SD 2, 4, ED 4-8	18,326	+0.85
51	Noxubee County: SD 4 Oktibbeha County: ALL Lowndes County: ED 20 Yazoo County: ED 1, 4, 5, 18	18,667	+2.72
52	Holmes County SD 1-3, 5 Yazoo County ED 2, 3, 31, 32	18,766	+3.27
53	Yazoo County SD 3 LESS ED 18; ED 25, 28-30	18,760	+3.24
54	Issaquena County SD 1-4 Sharkey County SD 1-2 Warren County SD 1, ED 13-14 Yazoo County SD 5, ED 24, 26, 27	18,921	+4.12
55	Warren County ED 3, SD 2 LESS ED 13-14, SD 4 LESS ED 35	18,249	+0.43
56	Claiborne County SD 2-4, ED 12 Warren County SD 5, ED 35	18,483	+1.71
57	Leake County: ALL Neshoba County ED 19	17,625	-3.00
58	Madison County ED 3, 6-17, 19-23 Yazoo County ED 33	18,550	+2.08
59	Madison County ED 1, 2, 4, 5, 24-34 Rankin County ED 1-3, 15, 16, 26, 27	18,913	+4.08
60	Rankin County ED 4-5, 19, 20, 22-23, 28-34, 36-38	18,438	+1.47
61	Rankin County ED 6-14, 16B-18, 21, 24, 35, 39, 41, 42	18,365	+1.07
62	Scott County: SD 1-4	17,146	-0.14

63	Neshoba County ALL LESS ED 17, 19-22	18,283	+0.52
64	Newton County SD 1, 3, 4 Scott County SD 5 Neshoba County ED 17, 20-22	18,013	-0.36
65	Lauderdale County ED 1, 20-21, 23-26, 38-41, 50-52, 62, 63, 65	18,189	+0.60
66	Lauderdale County ED 11-13B, 15-19, 32-37, 46-49 Newton County SD 2, 5	18,279	+0.50
67	Lauderdale County ED 2-10, 22, 27-31 42-45, 53, 73-75, 77, 78	18,573	+2.24
68	Lauderdale County ED 14, 54, 57-61, 64, 66-72, 76, 79-84	17,627	-2.19
69	Hinds County ED 91-98, 142, 149-152, 194, 196-204	17,791	-2.10
70	Hinds County ED 84, 88-90, 135-141, 143-148, 154, 155, 157	17,913	-1.40
71	Hinds County ED 156, 158-162, 182-192 A. B., 195	17,862	-1.70
72	Hinds County ED 129, 179-181, 192C	17,547	-3.43
73	Hinds County ED 22, 24, 25, 28, 29, 73, 74, 86, 87, 116-123	18,094	-0.36
74	Hinds County ED 21, 23, 26, 27, 30, 31, 33, 34, 36, 37, 40, 63	18,168	-0.01
75	Hinds County ED 71, 72, 110, 112-115, 124-128, 130, 131, 134A,B, 173A and B	18,053	-0.06
76	Hinds County ED 54,55 ED 99-109, 111, 132, 133, 171, 172	17,481	-3.8
77	Hinds County ED 32, 51, 52, 56-62, 64-70	17,687	-2.70
78	Hinds County ED 13-20, 35, 79-83, 85	18,060	-0.01
79	Hinds County ED 9-12, 30, 39, 41-50, 53, 163-167	17,959	-1.42
80	Hinds County ED 1-8, 75-78	18,356	+0.30

BEST COPY AVAILABLE

81	Copiah County SD 4, SD 5 LESS ED 1, 7 ED 15-19, 21-23	17,665	-2.79
82	Copiah County: Remainder Lawrence County SD 2, ED 6-8 Lincoln County SD 2, 5, ED 18	18,177	-0.03
83	Adams County ED 14, 17, 19B Claiborne County SD 1, ED 13 Jefferson County: ALL	17,446	-3.93
84	Franklin County ED 1-8, 12-14 Amite County ED 1-7, 11, 17-19 Lincoln County ED 22-24	17,684	-2.68
85	Lincoln County SD 1 LESS ED 18 SD 3, ED 25	17,316	-4.70
86	Smith County: ALL Jasper County SD 1, 3, ED 1	17,929	-1.33
87	Jasper County SD 4, 5, ED 2 Jones County SD 2 LESS ED 48A-C	17,998	-0.95
88	Clarke County: ALL Wayne County ED 2, 3 Jones County ED 3	17,985	-1.03
89	Jones County SD 4, 5 Wayne County SD 5, ED 4,5 Greene County ED 3	18,038	-0.73
90	Greene County ALL LESS ED 3 Wayne County SD 1, 2, ED 1	18,125	-0.25
91	Jones County ED 9, 17-19, 23, 24, 29-33 SD 3 LESS ED 3	17,361	-4.45
92	Jones County ED 10-16, 20-22, 25-28, 34-41, 48A-C	18,721	+3.02
93	Simpson County: ALL LESS ED 22,23	18,484	+1.72
94	Covington County: ALL Jefferson Davis County SD 3 Lamar County ED 1, 2	18,326	+0.85
95	Jefferson Davis County SD 1, 2, 4, 5 Lawrence County ALL LESS 6, 7, 7B, 9, 14, 15	18,035	-0.75

96	Lamar County ED 12, 13 Marion County SD 1, 2, 5	17,618	-3.04
97	Lawrence County SD 3, ED 9 Walthall County ED 8, 9, 13-15 SD 4,5 Marion County SD 3, 4, ED 18, 22	17,628	-2.99
98	Walthall County ED 6, 7, 10, 11, 12 Pike County SD 1, 3, 5, ED 3, 4, 15, 22-24, 28	17,713	-2.52
99	Pike County ED 5-14, 16-21, 25-27	18,363	+1.06
100	Adams County ED 1-13, 15-16, 31-38	18,244	+0.40
101	Franklin County ED 9-11 Adams County ED 18, 19A, 20-30, 39, 40	17,717	-2.49
102	Wilkinson County: ALL Amite County ED 8-10, 12-16 Adams County ED 41	17,434	-4.05
103	Lamar County SD 4, ED 3, 4 Forrest County ED 1-4, 7-8, 15A,B	17,709	-2.54
104	Forrest County ED 12-14, 16-27	18,308	-0.34
105	Forrest County ED 9-11, 28-38, 40-42, 45	18,015	-0.56
106	Forrest County ED 5-6, 43, 44 SD 4 and 5 Perry County: ALL	18,299	+0.20
107	Lamar County SD 1, 2 Stone County SD 2, ED 8, 10 Pearl River County SD 1-3, ED 15-16	18,582	+2.36
108	Stone County SD 4, 5, ED 6, 7, 9 George County: ALL	18,210	+0.21
109	Pearl River County SD 4: ALL LESS ED 35 SD 5: ALL LESS 15, 16	18,068	-0.37

110	Pearl River County ED 35 Hancock County: ALL	18,073	-0.54
111	Harrison County ED 34, 58-60, 78, 80, 85, 86B, 87A Jackson County SD 1, 5	18,554	+2.11
112	Harrison County ED 44,44B, 52, 53, 61-77, 79, 81-84, 86A, 87B-94	18,589	+2.30
113	Harrison County ED 29, 38-42, 55-57, 95-102, 107, 111, 129	18,535	+2.00
114	Harrison County ED 30, 45-51, 54, 103-106, 108-110, 112-113, 117-120, 9900	18,555	+2.11
115	Harrison County ED 12-19, 21-24, 31,32, 36B, 114-116, 128	18,519	+1.92
116	Harrison County ED 1-11, 20, 25-28	18,580	+2.15
117	Harrison County ED 130-160	18,733	+3.09
118	Harrison County ED 33,35, 36A, 37, 125-127B, 161-171 Jackson County ED 14-16B, 29, 30	18,564	+2.17
119	Jackson County ED 9-13G, 17-28	18,532	+1.99
120	Jackson County ED 8, 31, 31B, 42, 45-47, 51-57, 63-67, 9900	18,946	+4.26
121	Jackson County ED 48-50, 58-62, 68-72	18,523	+1.94
122	Jackson County ED 32-41, 43, 44	17,927	-1.34

STATE MODIFIED PLAN - HOUSE

ANALYSIS

DISTRICT	TOTAL	%DEVIATION	%BLACK	%BLACK VAP
1	18375	+1.12%	3.75%	
2	18006	-0.90%	15.24%	
3	18113	-0.31%	11.85%	
4	18437	+1.46%	7.14%	
5	18521	+1.93%	38.03%	
6	18184	+0.07%	65.0%	59.2%
7	18105	-0.36%	20.22%	
8	17780	-2.15%	37.0%	
9	18544	+2.50%	47.2%	
10	18129	-0.23%	61.23%	54.21%
11	18434	+1.45%	62.06%	55.96%
12	18286	+0.63	59.99%	50.90%
13	18026	+0.80	67.76%	63.15%
14	18194	+0.13%	57.59%	50.67%
15	18906	+4.04%	43.26%	
16	18506	+1.84%	25.36%	
17	18273	+0.56%	21.29%	
18	17803	-2.02%	34.93%	
19	18569	+2.19%	18.62%	
20	18236	+0.35%	19.29%	
21	18287	+0.63%	7.25%	
22	18525	+1.95%	18.88%	
23	18369	+1.08%	18.01%	
24	17344	-4.55%	62.13%	50.63%
25	17953	-1.19%	23.94%	
26	18339	+0.92%	15.41%	
27	17950	-1.22%	46.43%	
28	18192	+0.11%	18.34%	
29	17809	-1.99%	56.38%	48.01%
30	17548	-3.43%	40.84%	

DISTRICT	TOTAL	%DEVIATION	%BLACK	%BLACK VAP
31	18390	+1.20%	77.07%	70.53%
32	18293	+0.67%	41.72%	
33	18131	-0.22%	81.09%	75.71%
34	17964	-1.14%	75.13%	69.99%
35	18143	-0.16%	43.80%	
36	18367	+1.07%	64.21%	54.82%
37	18031	-0.77%	41.21%	
38	18022	-0.82%	35.55%	
39	18033	-0.75%	60.1%	54.24%
40	18321	+0.82%	39.12%	
41	18025	-0.81%	80.17%	74.63%
42	18002	-0.97%	41.4%	
43	17424	-4.11%	40.57%	
44	18538	+2.01%	63.38%	55.70%
45	18487	+1.74%	24.99%	
46	18150	-0.11%	51.41%	45.75%
47	18401	+1.27%	24.38%	
48	18406	+1.29%	39.11%	
49	17922	-1.37%	63.03%	54.03%
50	18326	+0.85%	56.65%	48.76%
51	18667	+2.72%	66.03%	59.27%
52	18766	+3.27%	64.62%	57.78%
53	18760	+3.24%	48.03%	
54	18921	+4.12%	49.32%	
55	18249	+0.43%	58.60%	56.02%
56	18483	+1.71%	27.94%	
57	17625	-3.00%	35.80%	
58	18550	+2.08%	61.18%	55.80%
59	18913	+4.08%	57.94%	53.04%
60	18438	+1.47%	40.88%	
61	18365	-0.14%	7.05%	
62	18146	-0.14%	32.14%	

DISTRICT	TOTAL	%DEVIATION	%BLACK	%BLACK VAP
63	18283	+0.62%	19.04%	
64	18013	-0.86%	29.61%	
65	18189	+0.10%	6.51%	
66	18269	+0.54%	23.0%	
67	18578	+2.24%	53.55%	48.18%
68	17627	-2.99%	29.21%	
69	17791	-2.10%	65.8%	60.8%
70	17913	-1.40%	36.4%	
71	17862	-1.70%	15.4%	
72	17547	-3.43%	0.14%	
73	18094	-3.36%	19.6%	
74	18168	-0.01%	89.98%	84.3%
75	18053	-0.06%	27.3%	
76	17481	-3.80%	77.0%	73.1%
77	17687	-2.70%	80.3%	77.6%
78	18060	-0.61%	43.2%	
79	17959	-1.22%	2.6%	
80	18356	+1.0%	3.3%	
81	17655	-2.79	58.46%	51.68%
82	18177	+0.03%	19.67%	
83	17446	-3.98%	72.11%	68.82%
84	17684	-2.68%	36.66%	
85	17316	-4.70%	31.14%	
86	17929	-1.33%	22.30%	
87	17998	-0.95%	37.98%	
88	17983	-1.03%	34.72%	
89	18038	-0.73%	12.82%	
90	18125	-0.25%	33.99%	
91	17361	-4.45%	55.23%	48.78%
92	18721	+3.02%	3.18%	
93	18484	+1.72%	29.96%	
94	18326	+0.85%	33.14%	
95	18035	-0.75%	47.59%	

DISTRICT	TOTAL	DEVIATION	%BLACK	%BLACK VAP
96	17618	-3.04%	30.21%	
97	17628	-2.99%	22.00%	
98	17713	-2.52%	46.88%	
99	18363	+0.06%	37.85%	
100	18284	+0.40%	67.80%	64.24%
101	17717	-2.49%	27.09%	
102	17434	-4.07%	65.99%	58.02%
103	17769	-2.25%	4.59%	
104	18108	-0.34%	4.66%	
105	18015	-0.56%	65.20%	60.26%
106	18299	+0.70%	19.56%	
107	18582	+2.26%	17.81%	
108	18569	+2.17%	0.39%	
109	18068	-0.57%	21.40%	
110	18073	-0.50%	13.65%	
111	18554	+2.11%	20.42%	
112	18509	+2.30%	13.51%	
113	18535	+2.00%	37.97%	
114	18555	+2.11%	25.42%	
115	18519	+1.92%	5.78%	
116	18580	+2.25%	4.51%	
117	18733	+3.09%	28.92%	
118	18564	+2.17%	0.39%	
119	18532	+1.99%	5.33%	
120	18946	+4.26%	15.11%	
121	18523	+1.94%	7.06%	
122	17987	-1.34%	39.01%	

CHART 1

House Bill 1290
Population ratios and deviation for multi-member and single member districts.

Total Mississippi Population: 2,216,912
Number of Representatives: 122
Mean Population per district:
(2,216,912 ÷ 122) 18,171

District (Number Representatives elected)

		Total Pop.	White Pop.	Black Pop.	% Blk	Dev.
1.(3)	SubDist A(1)					
	Benton	(7,505)	(4,350)	(3,149)	(42.0%)	
	Tippah	(15,852)	(13,260)	(2,581)	(16.3%)	
	Total	23,357	17,510	5,730	24.5%	*
	SubDist B(1)					
	Alcorn	27,179	23,951	3,196	11.8%	*
	Dist Wide(1)	50,536	42,240	8,296	17.7%	*
2.(2)	Prentiss	(20,133)	(17,776)	(2,353)	(11.7%)	
	Tishomingo	(14,940)	(14,268)	(663)	(4.4%)	
	Total	35,073	32,044	3,016	8.6%	-3.50
3.(3)	De Soto	(35,885)	(23,235)	(12,611)	(35.1%)	
	Marshall	(24,027)	(9,101)	(14,891)	(62.0%)	
	Total	59,912	32,336	27,502	45.9%	+9.9%
4.(5)	SubDist A(1)					
	Itawamba	16,847	15,882	951	5.6%	*
	SubDist B(2)					
	Lee	46,148	36,571	9,548	20.7%	*
	SubDist C(1)					
	Monroe	34,043	23,650	10,382	30.5%	*
	Dist Wide(1)	97,038	76,103	20,881	21.5%	*
5.(1)	Chickasaw	16,805	10,819	5,976	35.6%	-7.52
6.(1)	Pontotoc	17,363	14,254	3,097	17.8%	-4.45

District (Number Representatives Elected)		Total Pop.	White Pop.	Black Pop.	% Blk	Dev.
7.(1)	Union	19,096	16,145	2,944	15.4%	+5.0%
8.(2)	Calhoun	(14,623)	(10,807)	(3,813)	(26.1%)	
	Lafayette	(24,181)	(17,313)	(6,705)	(27.7%)	
	Total	38,804	28,120	10,518	27.1%	+6.77%
9.(2)	Panola	(26,829)	(13,061)	(13,753)	(51.3%)	
	Yalobusha	(11,915)	(7,071)	(4,814)	(40.4%)	
	Total	38,744	20,132	18,567	47.9%	+6.60%
10.(1)	Tate	18,544	9,777	8,760	47.2%	+2.50%
11.(4)	SubDist A(2)					
	Coahoma	40,447	14,232	26,013	89.0%	*
	SubDist B(1)					
	Quitman	(15,888)	(6,687)	(9,120)	(57.4%)	
	Tunica	(11,854)	(3,225)	(8,614)	(72.7%)	
	Total	27,742	9,912	17,734	63.9%	*
	Dist Wide(1)	68,189	24,144	43,747	64.2%	*
12.(1)	Tallahatchie	19,338	7,657	11,632	60.2%	+6.42%
13.(2)	Sunflower	37,047	13,619	23,261	62.8%	+1.93%
14.(3)	Bolivar	49,409	18,750	30,338	61.4%	-9.37%
15.(4)	Issaquena	(2,737)	(1,033)	(1,698)	(62.0%)	
	Washington	(70,581)	(31,803)	(38,460)	(54.5%)	
	Total	73,318	32,836	40,158	54.8%	+0.87%
16.(2)	Holmes	(23,120)	(7,345)	(15,743)	(68.1%)	
	Humphreys	(14,601)	(5,089)	(9,460)	(64.8%)	
	Total	37,721	12,434	25,203	66.8%	+3.79%

1/ One must be resident of Lafayette

2/ One must be resident of Panola

District (Number Representatives Elected)		Total Pop.	White Pop.	Black Pop.	% Blk	Dev.
17.(3)	Carroll	(9,397)	(4,615)	(4,771)	(50.8%)	
	Leflore	(42,111)	(17,550)	(24,374)	(57.9%)	
	Total	51,508	22,165	29,145	56.5%	-5.52%
18.(2)	Grenada	(19,854)	(11,154)	(8,690)	(43.8%)	
	Montgomery	(12,918)	(7,121)	(5,787)	(44.8%)	
	Total	32,772	18,275	14,477	44.2%	-9.85%
19.(1)	Attala	19,570	11,632	7,903	40.4%	-13.65%
20.(1)	Winston	18,406	11,065	7,198	39.1%	+1.29%
21.(1)	Choctaw	(8,440)	(6,069)	(2,366)	(28.0%)	
	Webster	(10,047)	(7,789)	(2,253)	(22.4%)	
	Total	18,487	13,858	4,619	25.0%	+1.73%
22.(1)	Clay	18,840	9,517	9,306	49.4%	+3.68%
23.(5)	SubDist A(2)					
	Lowndes	49,700	33,336	16,236	32.7%	*
	SubDist B(2)3/					
	Noxubee	(14,288)	(4,844)	(9,397)	(65.8%)	
	Oktibbeha	(28,752)	(18,569)	(10,004)	(34.8%)	
	Total	43,040	23,413	19,401	45.1%	*
	Dist Wide(1)	92,740	56,749	35,637	38.4%	*
24.(4)	Kemper	(10,233)	(4,488)	(5,612)	(54.8%)	
	Lauderdale	(67,087)	(46,186)	(20,630)	(30.8%)	
	Total	77,320	50,674	26,242	33.9%	+6.37%

3/ One must be resident of Oktibbeha County.

4/ One must be resident in Kemper and 3 must reside in Lauderdale.

District (Number Representatives Elected)		Total Pop.	White Pop.	Black Pop.	% Blk	Dev.
25.(3)	SubDist A(1)					
	Clarke	(15,049)	(9,631)	(5,396)	(35.9%)	
	Jasper	(15,994)	(8,564)	(7,416)	(46.4%)	
	Total	31,043	18,195	12,812	41.3%	*
	SubDist B(1)					
	Newton	18,983	13,352	5,187	27.3%	*
	Dist Wide(1)	50,026	31,541	17,999	36.0%	*
26.(2)	5/ Leake	(17,085)	(10,452)	(6,091)	(35.7%)	
	Neshoba	(20,802)	(15,091)	(4,098)	(19.7%)	
	Total	37,887	25,543	10,189	26.9%	+4.25%
27.(2)	Scott	(21,369)	(14,254)	(7,053)	(33.0%)	
	Smith	(13,561)	(10,609)	(2,088)	(15.4%)	
	Total	34,930	24,863	9,141	26.2%	-3.89%
28.(4)	SubDist A(1)					
	Madison	29,737	11,148	18,548	62.3%	*
	SubDist B(2)					
	Rankin	43,933	31,529	12,354	28.1%	*
	Dist Wide(1)	73,670	42,676	30,902	42.0%	*
29.(2)	6/ Sharkey	(8,937)	(3,125)	(5,784)	(64.7%)	
	Yazoo	(27,304)	(12,690)	(14,579)	(53.4%)	
	Total	36,241	15,815	20,363	56.2%	-.28%
30.(3)	Claiborne	(10,086)	(2,536)	(7,522)	(74.6%)	
	Warren	(44,981)	(26,474)	(18,355)	(40.8%)	
	Total	55,067	29,010	25,877	47.0%	+1.01%

5/ One must reside in Leake and 1 must reside in Neshoba.

6/ One must reside in Yazoo.

District (Number Representatives Elected)		Total Pop.	White Pop.	Black Pop.	% Blk	Dev.
31.(12)	SubDist A(2)					
	Super.Dist 1	42,948	30,289	12,695	29.5%	*
	SubDist B(2)					
	Super.Dist 2	43,051	20,077	22,984	53.4%	*
	SubDist C(2)					
	Super.Dist 3	43,199	31,237	11,962	27.7%	*
	SubDist D(2)					
	Super.Dist 4	43,010	29,260	13,750	32.0%	*
	SubDist E(2)					
	Super.Dist 5	42,755	19,689	23,066	54.0%	*
	Dist Wide(2)	214,973	130,592	84,064	39.1%	*
32.(2)	7/ Copiah	(24,749)	(12,298)	(12,437)	(50.3%)	
	Jefferson	(9,295)	(2,296)	(6,996)	(75.3%)	
	Total	34,044	14,594	19,433	57.1%	-6.33%
33.(2)	Adams	37,293	19,366	17,865	47.9%	+2.61%
34.(2)	Amite	(13,763)	(6,814)	(6,942)	(50.4%)	
	Franklin	(8,011)	(4,897)	(3,109)	(38.8%)	
	Wilkinson	(11,099)	(3,588)	(7,499)	(67.6%)	
	Total	32,873	15,299	17,550	53.4%	-9.55%
35.(3)	SubDist A(1)					
	Lincoln	26,198	18,138	8,035	30.7%	*
	SubDist B(1)					
	Pike	31,756	17,903	13,827	43.5%	*
	Dist.Wide(1)	57,954	36,041	21,862	37.7%	*
36.(1)	Simpson	19,947	13,678	6,258	31.4%	+9.77%

7/ One must reside in Copiah.

District (Number Representatives Elected)		Total Pop.	White Pop.	Black Pop.	% Blk	Dev.
37.(2)	Covington	(14,002)	(9,425)	(4,565)	(32.3%)	
	Jefferson Davis	(12,936)	(6,436)	(6,497)	(50.2%)	
	Lawrence	(11,137)	(7,553)	(3,580)	(32.2%)	
	Total	38,077	23,415	14,642	38.5%	+4.77%
38.(2)	Marion	(22,871)	(15,739)	(7,102)	(31.1%)	
	Walthall	(12,500)	(7,403)	(5,088)	(40.7%)	
	Total	35,371	23,142	12,190	34.5%	-2.68%
39.(4)	Forrest	(57,849)	(43,524)	(14,151)	(24.5%)	
	Lamar	(15,209)	(13,187)	(2,013)	(13.2%)	
	Total	73,058	56,711	16,164	22.1%	+0.51%
40.(3)	Jones	56,357	42,403	13,810	24.5%	+3.38%
41.(1)	Wayne	16,650	11,169	5,470	32.9%	-8.38%
42.(1)	Greene	(8,545)	(6,662)	(1,878)	(22.0%)	
	Perry	(9,065)	(6,074)	(2,385)	(26.3%)	
	Total	17,610	12,736	4,264	24.2%	-3.09%
43.(2)	8/ Pearl River	(27,802)	(22,688)	(5,094)	(18.3%)	
	Stone	(8,101)	(6,220)	(1,864)	(23.0%)	
	Total	35,903	28,908	6,958	19.4%	-1.21%
44.(1)	Hancock	17,387	14,894	2,467	14.2%	-4.32%
45.(7)	SubDist A(1) Super.Dist 1	23,151	17,632	5,451	23.5%	*
	SubDist B(1) Super.Dist 2	31,480	25,240	6,143	19.5%	*
	SubDist C(1) Super.Dist 3	17,276	15,511	1,667	9.6%	*

8/ One must reside in Pearl River.

District (Number Representatives Elected)		Total Pop.	White Pop.	Black Pop.	% Blk	Dev.
45.(7)	SubDist D(1) Super.Dist 4	21,082	13,708	7,240	34.3%	*
	SubDist E(1) Super.Dist 5	41,593	38,970	2,242	5.4%	*
	Dist.Wide(2)	134,582	111,061	22,743	16.9%	*
46.(6)	9/ Jackson	(87,975)	(73,547)	(14,258)	(16.2%)	
	George	(12,459)	(11,007)	(1,448)	(11.6%)	
	Total	100,434	83,554	15,706	15.6%	-7.89%

Total deviation excluding floterial districts: 19.73%

Total number representatives elected from districts with population 50%+ black = 30

9/ One must reside in George County and one must reside in each of 5 supervisor districts for Jackson.

* Deviations for these districts are contained in Chart 2.

CHART 2

House Bill 1290
Deviations for floterial districts 1/

Representation factor per person = .000055 (122 ÷ 2,216,912)

	Total Pop.	Ideal Rep.	No. Rep. Elected	% Dev.
District 1				
Subdistrict A	23,357	1.285	1.462	-13.77%
Subdistrict B	27,179	1.495	1.537	- 2.80%
District 4				
Subdistrict A	16,847	0.927	1.174	-26.64%
Subdistrict B	46,148	2.538	2.476	+ 2.45%
Subdistrict C	34,043	1.872	1.351	+27.84%
District 11				
Subdistrict A	40,447	2.225	2.593	-16.73%
Subdistrict B	27,742	1.526	1.407	+ 7.80%
District 23				
Subdistrict A	49,700	2.734	2.536	+ 7.25%
Subdistrict B	43,040	2.367	2.464	- 4.09%
District 25				
Subdistrict A	31,043	1.708	1.621	+5.09%
Subdistrict B	18,983	1.044	1.379	-32.08%
District 28				
Subdistrict A	29,737	1.636	1.404	+14.19%
Subdistrict B	43,933	2.416	2.596	- 7.45%
District 31				
Subdistrict A	42,948	2.362	2.399	- 1.56%
Subdistrict B	43,061	2.368	2.400	- 1.35%
Subdistrict C	43,199	2.376	2.401	- 1.05%
Subdistrict D	43,010	2.366	2.400	- 1.43%
Subdistrict E	42,755	2.350	2.398	- 2.04%
District 35				
Subdistrict A	26,198	1.441	1.452	- 0.76%
Subdistrict B	31,756	1.747	1.548	+11.4%
District 45				
Subdistrict A	23,151	1.273	1.172	+ 7.84%
Subdistrict B	31,480	1.731	1.234	+28.71%
Subdistrict C	17,276	.950	1.128	-18.78%
Subdistrict D	21,082	1.160	1.157	+ 0.29%
Subdistrict E	41,593	2.288	1.309	+42.79%

Total Deviation including floterial districts = 74.87%

1/ Since floterial districts involve various combinations of subdistricts to elect more than one representative, the deviation must be computed in two steps. The number of representatives elected by a county or subdistrict is equivalent the summation of the %'s the subdistrict comprises of the population base for each representative whose election it participates in. For example:

District 1

1. Subdistrict A population 23,357
   ÷ Total District 1 Population 50,536 ÷ 0.462

   Subdistrict A - No. of Representatives elected:
   Subdistrict A = 1
   portion of districtwide rep. = .462
   Total 1.462

2. Number Ideal Representatives:
   Subdistrict A population (23,357) X
   Representation factor per person (.000055) = 1.285

3. Deviation
   Number of Representatives elected ÷ Ideal
   1.462 ÷ 1.285 = +13.77% Dev.

CHART 3

House Bill 1290
VAP and Registered voter ratios for districts 50%+ Black.

Dist.	(No. Reps.)	(% Pop Black)	Total VAP	Black VAP	% B VAP	Tot Reg Voters	W Reg.* Voters	B Reg.* Voters	% B Reg. Voters
11	Subdist A(2)	(89%)	22,744	13,235	58.2%	16,586	7,321	9,265	55.9%
11	Subdist B(1)	(63.9%)	15,083	8,565	56.8%	11,015	5,019	5,996	54.4%
11	Dist.wide(1)	(64.2%)	37,827	21,800	57.6%	27,601	12,341	15,260	55.3%
12	(1)	(60.2%)	10,808	5,606	51.9%	9,225	5,301	3,924	42.5%
13	(2)	(62.8%)	21,167	11,598	54.8%	15,487	7,368	8,119	52.4%
14	(3)	(61.4%)	~~20,458~~	14,778	~~51.9%~~ 53.3%	20,879	10,534	10,345	49.6%
15	(4)	(54.8%)	41,686	20,583	49.4%	--	--	--	--
16	(2)	(66.8%)	21,632	12,844	59.4%	15,758	6,767	8,991	57.1%
17	(3)	(56.6%)	30,506	15,290	50.1%	22,419	11,716	10,703	47.7%
28	Subdist A(1)	(62.3%)	13,535	7,578	56.0%	9,892	4,587	5,305	53.6%
29	(2)	(56.2%)	20,888	10,359	49.6%	--	--	--	--
31	Subdist B(2)	(53.4%)	25,234	12,598	49.9%	--	--	--	--
	Subdist E(2)	(54.0%)	26,015	12,642	48.6%	--	--	--	--
32	(2)	(57.1%)	70,687	10,356	50.1%	15,204	7,955	7,249	46.7%
34	(2)	(53.4%)	19,902	9,267	46.6%	--	--	--	--

Total Representatives Elected from districts with VAP 50%+ Black = 18

Total Representatives Elected from districts with registered voters 50%+ Black = 9

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* Computed by multiplying VAP by 77% for whites and 70% for blacks. Figures were chosen on basis of records which indicated that the lowest estimate for % of whites registered was 77% and highest estimate for % of blacks was 70%.

ANALYSIS OF SENATE BILL 2976

Our analysis of Senate Bill 2976 reveals that both the combination of counties and the use of multi-member and floterial districts resulted in significant dilution of black voting strength. That analysis indicates that such dilution exists in the following districts established by S.B. 2976: Districts 1, 6, 8, 9, 12, 14, 15, 18, 22, 24 and 25. Additionally, districts 4, 7, 10, 16, 17, 20, 27 and 29, which adjoin these objectionable districts well may require alteration in order to correct the objectionable features of S.B. 2976 and our modification to the plan does so. Districts 2, 3, 5, 11, 13, 21, 23, 26, 28, 30, 31, 32 and 33 are left unaffected.

A synopsis of this Department's evaluation of S.B. 2976 can be stated most succinctly by discussing districts in groups according to the various types of districts utilized in S.B. 2976; *i.e.*, single-county single-member districts, multi-county single-member districts, single-county multi-member districts, multi-county multi-member districts, and multi-county floterial districts.

With respect to the single-county single-member districts[1] and the multi-county multi-member floterial districts, District 27, our analysis revealed no basis for objection on Section 5 grounds. However, District 10 (Coahoma County) was not kept intact in our modified plan attached hereto since many of the surrounding districts had to be altered and use of Coahoma County provided a practical contribution to correcting objectionable features in those districts.

Likewise most of the multi-county single-member districts (districts 2, 3, 7, 16, 17, 20, 26, 28, 29 and 31) are unobjectionable. However, the combination of various counties and the use of an entire county as the minimum division for a district results in dilution of black voting strength in several districts by combining a majority black county with a majority white county and by dividing concentrations of black population which transcend county boundaries. This is so in Districts 8,

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[1] Districts 5, 10, 13 21 and 23.

9, 14 and 18 with the result that there is no districts with a majority black VAP despite a heavily concentrated black population of approximately 140,000 in this area of the State. Either a regrouping of these counties or the use of enumeration districts as the minimum component for structuring new districts results in districts which meet the norm of 42,634 and avoid the dilution of black voting strength. See Appendix A and accompanying chart.

The 3 single-county multi-member districts created by S.B. 2976, *i.e.*, Hinds (District 22), Harrison (District 32) and Jackson Counties (District 38), are those three counties as to which the Supreme Court has directed the establishment of single-member districts. Without suggesting a result different than that dictated by the Supreme Court, our analysis indicates that significant dilution of black voting strength exists only with regard to Hinds County and, thus, an objection on Section 5 grounds is limited to District 22 in this category.

A survey of Hinds County maps indicate a heavy black population concentration in the center city of Jackson and a less dense, but yet, significant concentration in western Hinds County. Only the submergence of these concentrations in a large multi-member district or an intentional gerrymander would avoid the establishment of at least one, and likely two, districts with a majority black VAP. A single-member district plan which corrects this dilution and which involves only minimal displacement of existing voting precincts is attached.

The greatest number of districts established by S.B. 2976 are multi-county multi-member districts.[2] In addition to the combination of black majority counties with white majority counties and the use of county boundaries as the minimum component for establishing districts, our analysis also involved an evaluation of the numbered post provision, the full slate requirement operable in Mississippi and the size of some districts. An example of the combination of all of these features are

[2] District 1, 4, 6, 11, 12, 15, 19, 24, 25 and 30.

District 24 and 25 which combine five majority black counties by population [3] with four majority white counties by population [4] creating two majority white districts by VAP. District 24 extends ½ the width of the state.

District 15, although majority black by VAP, is so large (it is approximately four times the size of Hinds County) that effective participation in the seeking of political office as a practical matter is limited to those with the funds extensive enough to cover the area which would, *a fortiori*, fall with heavier weight on black than white candidates. Appendix A provides an acceptable alternative.

[3] Jefferson, Copiah, Claiborne, Amite and Wilkinson.

[4] Adams, Franklin, Lincoln and Simpson.

[5] Consists of Holmes, Issaquena, Madison, Sharkey and Yazoo.

STATE SENATE PLAN - SENATE

District	Description	Population	Deviation %
1	Tishomingo County: All Prentiss County: All Itawamba County SD 1, 2	42192	-1.30
[illegible]	Benton County:All Tishomingo County: All Union County:All	43553	+3.11
3	Alcorn County:All Tippah County:All	43031	+0.93
4	Marshall County:All DeSoto County [illegible] Tate County ED 3, 20, 21	42182	-1.06
5	DeSoto County ED 8-13, 1/2-15, 15B-22, 26, 27 Tate County: Remainder Tunica County: ED 1, 2, 4-9	42338	-0.69
6	Tunica County:Remainder Coahoma County: All less ED 43-46	42694	+0.11
7	Quitman County: All Coahoma County: ED 43-46 Tallahatchie County: ED 10-19 Panola County ED 1, 3-9, 15-19, 26, 28-31	42532	-0.23
8	Tallahatchie County: Remainder Yalobusha County: All Panola County: Remainder Lafayette County ED 10, 11, 15-17, 22	42483	-0.35
9	Lafayette County: Remainder Calhoun County: All Chickasaw County: SD 1, 2	41653	+0.04
10	Grenada County: All Montgomery County: All Carroll County: All	42169	-1.09
11 (2)	Bolivar County: All Sunflower County: All	86456	+1.39
12	Choctaw County: All Webster County: All Chickasaw County SD 1, 4, ED 17, 19, 20	41120	-3.55
13	Leflore County: All	42111	-1.23
14	Lowndes County SD 2, 3 ED 2, 5, 6A, 6B	42520	+0.67
15	Lowndes County SD 1, 3, 4 Monroe County [illegible] Itawamba County: SD 3-5	40037	-6.16

16	Attala County: All Leake County SD 3, SD 2 less ED 10 SD 1 less ED 2 Neshoba County SD 5, SD 1 less ED 9-12	38684	-9.26
17	Lauderdale County Newton County: All	43904	+2.97
18	Lauderdale County SD 1, 2, 5	43162	+1.23
19	Scott County: All Leake County SD 4, 5 ED 2, 10 Neshoba County SD 2-4, ED9-12	40642	-4.67
20	Winston County: All Noxubee County: All Kemper County: All	42927	+0.68
21	Rankin County: All	43933	+3.08
22	Claiborne County: All Copiah County: All less SD2 Jefferson County: All	41086	-3.63
23	Warren County: All	44981	+5.50
24	Simpson County: All Copiah County: SD 2 Lincoln County SD 2-4, ED 19-21 Lawrence County SD 2, 4 ED 8	40665	-4.62
25	Marion County: All Jefferson Davis County: All Lawrence County: SD 3,5 ED	40929	-4.72
26	Pike County: All Walthall County: All	44256	+3.80
27	Amite County: All Wilkinson County: All Adams County ED 6-13, 25, 32, 34-38, 40, 41	41602	-2.23
28	Clarke County: All Jasper County: All Smith County: All	44604	+3.35
29	Adams County: Remainder Franklin County: All Lincoln County: SD 5, ED 5-17	41403	-2.88
30 (2)	Forrest County: All Lamar County: All Stone County: All	81189	-4.82
31	Hancock County: All Pearl River County: All	45189	+5.99
32 (3)	Harrison County: All	134,582	+5.22
33 (2)	Jackson County: All	87975	+3.17

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34	Wayne County SD 3-5 Jones County SD 3, SD 1 less ED 1, 4, 38-40	38127	-10.57
35	Covington County: All Jones County: ~~All~~ Remainder	37753	-11.44
36	Greene County: All George County: All Perry County: All Wayne County: SD 1,2	41929	-1.65
37	Madison County: All Yazoo County SD2, ED 1-3, 5, 9-11, 13-16, 28, 29	43~~44~~257	+2.13 ~~+1.02~~
38	Holmes County: All Humphreys County: All Yazoo County ED 6-8, 12, 17, 18	44833	+5.15
39	Issaquena County: All Sharkey County: All Washington County SD 1, 2, 4, 5 ED 41, 59-62 Yazoo County SD 5, ED 19-21, 24- 27	43431	+2.83
40	Washington County SD 1 less 41, 59-62	44586	+4.56
41	Hinds County House District 69, 70, 71 lessED 143, 155, 156, 158, 159, 182-185, 192A and B	43019	+0.90
42	Hinds County House District 72, 75less ED 71, 72, 112-114 plus ED 123, 156 158, 159, 182-185, 192 A and B	43462	+1. 94
43	Hinds County House District 74, 76, 77, less ED 21, 23, 26, 37, 40, 51, 52	42798	+0.38
44	Hinds County House District 73 less ED 123 plus ED 13-21, 23, 26, 35, 40, 71, 72, 85	42831	+0.46
45	Hinds County House District ~~78~~, ~~79~~ ED 37, 51, 52, 79-83	42843	+0.49
46	Chickasaw County: SD 3-5 Clay County: All Oktibbeha County: SD 2, 5, ED 18 Lowndes County: Sd 4,5 Monroe County: ED 16,17, 33-38	40435	-5.15
47	Lee: All	46148	+8.24

STATE MODIFIED PLAN - SENATE

District	Total population	%Deviation	% Black	%Black VAP
1	42192	-1.03%	7.32%	
2	43963	+3.11%	20.90%	
3	43031	+0.93%	13.43%	
4	42182	-1.06%	55.43%	49.87%
5	42338	-0.69%	38.81%	
6	42684	+0.11%	63.21%	60.16%
7	42532	-0.23%	63.79%	56.91%
8	42403	-0.35%	46.25%	
9	42653	+0.04%	24.55%	
10	42169	-1.09%	30.64%	
11 (2)	86456	+1.39%	62.00%	54.0%
12	41120	-3.55%	24.77%	
13	42111	-1.23%	57.88%	52.0%
14	42920	+0.67%	29.49%	
15	40007	-6.16%	19.88%	
16	38684	-9.26%	35.9%	
17	43904	+2.97%	26.85%	
18	43162	+1.23%	34.84%	
19	40642	-4.67%	28.18%	
20	42927	+0.68%	51.73%	44.93%
21	43933	+3.08%	28.12%	
22	41~~0~~86	-3.63%	64.29%	58.73%
23	44981	+5.50	40.81%	
24	40~~615~~	~~-467~~ -3.89%	28~~.5~~%	
25	40~~621~~ 929	-4.~~74~~%	36.~~82~~%	
26	44256	+3.80%	42.74%	
27	41682	-2.23%	61.09%	55.46%
28	44604	+3.39	33.41%	
29	41403	-2.88%	33.03%	
30 (2)	81189	-4.82%	22.21%	
31	45189	+5.99%	16.73%	
32 (3)	134,582	+5.22%	16.90%	
33 (2)	87975	+3.17%	16.21%	

District	Total population	%Deviation	%Black	%Black VAP
34	38127	-10.57%	28.20%	
35	37753	-11.44%	21.71%	
36	41927	-1.65%	23.04%	
37	43641 757	+1.02% +2.31%	60.96%	56.28%
38	44833	+5.15%	64.08%	54.7%
39	43841	+2.83%	56.59%	54.10%
40	44586	+4.58%	53.53%	48.01%
41	43019	+0.90%	48.7%	
42	43462	+1.94%	11.45%	
43	42798	+0.38%	83.28%	80.1%
44	42831	+0.46%	42.53%	
45	42843	+0.49%	5.19%	
46	40435	-5.15%	65.41%	54.36%

CHART 4

Senate Bill 2976
Population ratios and deviations.

Total Mississippi Population: 2,216,912
Number of Representatives: 52
Mean Population per district
(2,216,912 ÷ 52) = 42,634
Representation factor
(52 ÷ 2,216,912) = .0000234

	Total Pop.	White Pop.	Black Pop.	% Blk	Dev.
District 1(2)					
Desoto	(35,885)	(23,235)	(12,611)	(35.14)	
Lafayette	(24,181)	(17,313)	(6,705)	(27.73)	
Marshall	(24,027)	(9,101)	(14,891)	(61.98)	
Total	84,093	49,649	34,207	40.68	-1.38%
District 2(1)					
Benton	(7,505)	(4,350)	(3,149)	(41.96)	
Pontotoc	(17,363)	(14,254)	(3,097)	(17.84)	
Union	(19,096)	(16,145)	(2,944)	(15.42)	
Total	43,963	34,749	9,190	20.90	+3.11%
District 3(1)					
Alcorn	(27,179)	(23,951)	(3,196)	(11.76)	
Tippah	(15,852)	(13,260)	(2,581)	(16.28)	
Total	43,031	37,211	5,777	13.43	+ .93%
District 4(2)					
Itawamba	(16,847)	(15,882)	(951)	(5.64)	
Monroe	(34,043)	(23,650)	(10,382)	(30.50)	
Prentiss	(20,133)	(17,776)	(2,353)	(11.69)	
Tishomingo	(14,940)	(14,268)	(663)	(4.44)	
Total	85,963	71,576	14,349	16.69	+ .82%
District 5(1)					
Lee	46,148	36,571	9,548	5.64	+8.24%
District 6(2)					
Chickasaw	(16,805)	(10,819)	(5,976)	(35.56)	
Clay	(18,840)	(9,517)	(9,306)	(49.39)	
Lowndes	(49,700)	(33,336)	(16,236)	(32.67)	
Total	85,345	53,672	31,518	36.93	+ .09%

	Total Pop.	White Pop.	Black Pop.	% Blk	Dev.
District 7(1)					
Calhoun	(14,623)	(10,807)	(3,813)	(26.08)	
Choctaw	(8,440)	(6,069)	(2,366)	(28.03)	
Montgomery	(12,918)	(7,121)	(5,787)	(44.80)	
Webster	(10,047)	(7,789)	(2,253)	(22.42)	
Total	46,028	31,786	14,219	30.89	+7.96%
District 8(1)					
Panola	(26,829)	(13,061)	(13,753)	(51.26)	
Yalobusha	(11,915)	(7,071)	(4,814)	(40.40)	
Total	38,744	20,132	18,567	47.92	-9.93%
District 9(1)					
Quitman	(15,888)	(6,687)	(9,120)	(57.40)	
Tate	(18,544)	(9,777)	(8,760)	(47.24)	
Tunica	(11,854)	(3,225)	(8,614)	(72.67)	
Total	46,286	19,689	26,494	57.24	+8.57%
District 10(1)					
Coahoma	40,447	14,232	26,013	64.04	-5.13%
District 11(2)					
Bolivar	(49,409)	(18,750)	(30,338)	(61.40)	
Sunflower	(37,047)	(13,619)	(23,261)	(62.79)	
Total	86,456	32,369	53,899	62.00	+1.39%
District 12(2)					
Humphreys	(14,601)	(5,089)	(9,460)	(64.79)	
Washington	(70,581)	(31,803)	(38,460)	(54.49)	
Total	85,182	36,892	47,920	56.26	- .01%
District 13(1)					
Leflore	42,111	17,550	24,374	57.88	-1.23%
District 14(1)					
Grenada	(19,854)	(11,154)	(8,690)	(43.77)	
Tallahatchie	(19,338)	(7,657)	(11,632)	(60.15)	
Total	39,192	18,811	20,322	51.85	-8.07%
District 15(2)					
Holmes	(23,120)	(7,345)	(15,743)	(68.09)	
Issaquena	(2,737)	(1,033)	(1,698)	(62.04)	
Madison	(29,737)	(11,148)	(18,548)	(62.37)	
Sharkey	(8,937)	(3,125)	(5,784)	(64.72)	
Yazoo	(27,304)	(12,690)	(14,579)	(53.40)	
Total	91,835	35,341	56,352	61.36	+7.70%

	Total Pop.	White Pop.	Black Pop.	% Blk	Dev.
District 16(1)					
Attala	(19,570)	(11,632)	(7,903)	(40.38)	
Carroll	(9,397)	(4,615)	(4,771)	(50.77)	
Leake	(17,085)	(10,452)	(6,091)	(35.65)	
Total	46,052	26,699	18,765	40.75	+8.02%
District 17(1)					
Neshoba	(20,802)	(10,452)	(6,091)	(35.65)	
Winston	(18,406)	(11,065)	(7,198)	(39.11)	
Total	39,208	21,517	13,289	33.89	-8.04%
District 18(1)					
Noxubee	(14,288)	(4,844)	(9,397)	(65.77)	
Oktibbeha	(28,752)	(18,569)	(10,004)	(34.79)	
Total	43,040	23,413	19,401	45.08	+0.95%
District 19(2)					
Kemper	(10,233)	(4,488)	(5,612)	(54.84)	
Lauderdale	(67,087)	(46,186)	(20,630)	(30.75)	
	77,320	50,674	26,242	33.94	-9.32%
District 20(1)					
Newton	(18,983)	(13,352)	(5,187)	(27.32)	
Scott	(21,369)	(14,254)	(7,053)	(33.00)	
Total	40,352	27,606	12,240	30.33	-5.35%
District 21(1)					
Rankin	43,933	31,529	12,354	28.12	-3.08%
District 22(5)					
Hinds	214,973	130,592	84,064	39.10	+0.85%
District 23(1)					
Warren	44,981	26,474	18,355	40.81	+5.50%
District 24(2)					
Claiborne	(10,086)	(2,536)	(7,522)	(74.58)	
Copiah	(24,749)	(12,298)	(12,437)	(50.25)	
Lincoln	(26,198)	(18,138)	(8,035)	(30.67)	
Simpson	(19,947)	(13,678)	(6,258)	(31.37)	
Total	80,980	46,650	34,252	42.30	-5.03%

	Total Pop.	White Pop.	Black Pop.	% Blk	Dev.
District 25(2)					
Adams	(37,293)	(19,366)	(17,865)	(47.90)	
Amite	(13,763)	(6,814)	(6,942)	(50.44)	
Franklin	(8,011)	(4,897)	(3,109)	(38.81)	
Jefferson	(9,295)	(2,246)	(6,996)	(75.26)	
Wilkinson	(11,099)	(3,588)	(7,499)	(67.56)	
Total	79,461	36,911	42,411	53.37	-6.81%
District 26(1)					
Pike	(31,756)	(17,903)	(13,827)	(43.54)	
Walthall	(12,500)	(7,403)	(5,088)	(40.78)	
Total	44,256	25,306	18,915	42.74	+3.80%
District 27(3)					
Subdist. A(1)					
Jones	56,357	42,403	13,810	24.50*	
Subdist. B(1)					
Jeff-Davis	(12,936)	(6,436)	(6,497)	(50.22)	
Covington	(14,002)	(9,426)	(4,565)	(32.60)	
Lawrence	(11,137)	(7,553)	(3,580)	(32.15)	
Marion	(22,871)	(15,739)	(7,102)	(31.05)	*
Total	60,946	39,154	21,744	35.67**	
Districtwide(3)	117,303	81,557	35,554	30.31**	*
District 28(1)					
Clarke	(15,049)	(9,631)	(5,396)	(35.86)	
Jasper	(15,994)	(8,564)	(7,416)	(46.37)	
Smith	(13,561)	(10,609)	(2,088)	(15.40)	
Total	44,604	28,804	14,900	33.41	+3.35%
District 29(1)					
Greene	(8,545)	(6,662)	(1,878)	(21.98)	
George	(18,459)	(11,007)	(1,448)	(11.62)	
Perry	(9,065)	(6,674)	(2,386)	(26.32)	
Wayne	(16,650)	(11,169)	(5,470)	(32.85)	
Total	46,719	35,512	11,182	23.93	+9.58%
District 30(2)					
Forrest	(57,849)	(43,524)	(14,151)	(24.46)	
Lamar	(15,207)	(13,187)	(2,013)	(13.24)	
Stone	(8,101)	(6,220)	(1,864)	(23.01)	
Total	81,189	62,931	18,028	22.21	-4.82%

	Total Pop.	White Pop.	Black Pop.	% Blk	Dev.
District 31(1)					
Hancock	(17,387)	(14,894)	(2,467)	(14.19)	
Pearl River	(27,802)	(22,688)	(5,094)	(18.32)	
Total	45,189	37,582	7,591	16.73	-5.99%
District 32(3)					
Harrison	134,582	111,061	22,743	16.90	+5.22%
District 33(2)					
Jackson	87,975	73,547	14,258	16.21	+3.17%

Total Deviation excluding floterial district = 19.56%

Total Deviation including floterial district = 21.78%

**

	Total Pop.	Ideal Rep.	No. Rep. Elected	Dev.
Subdistrict A	56,357	1.319	1.480	- 12.2
Subdistrict B	60,946	1.426	1.520	- 6.5

CHART 5

istrict	No. Reps.	% Blk.	Total VAP	Black VAP	% Blk VAP	Total Reg. Voters	White* Reg. Voters	Black* Reg. Voters	% Black Reg. Voters
9	1	57.2%	25,928	12,733	49.1%	--	--	--	--
10	1	89.0%	22,624	13,235	58.5%	16,495	7,230	9,265	56.2%
11	2	62.0%	48,815	26,376	54.0%	35,741	17,278	18,463	51.7%
12	2	56.3%	47,976	24,372	50.8%	35,235	18,175	17,060	48.4%
13	1	57.9%	24,676	12,830	52.0%	18,102	9,121	8,981	49.6%
14	1	51.9%	23,058	10,207	44.3%	--	--	--	--
15	2	61.2%	52,959	29,094	54. %	38,742	18,376	20,366	52.6%
25	2	53.4%			48.0%				

Number Representatives elected from district with VAP 50%+ black = 10

Number Representatives elected from district with registered voters

* Computed by multiplying VAP by 77% for whites and 70% for blacks. Figures chosen on basis of record which indicated that the lowest estimate for % of whites registered was 77% and highest estimate for % of blacks was 70%.

Respectfully submitted,

/s/ Michael D. Johnson
GERALD W. JONES
MICHAEL D. JOHNSON
Attorneys
Department of Justice
Washington, D.C. 20530

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

June 20, 1975

TRANSCRIPT OF PROCEEDINGS

* * * *

[76] BY JUDGE COLEMAN: All right. I want to ask you now if you have ever at any time really articulated in plain language that the average legislator can understand where the defects are in the 1975 Act. In other words, these, if you will read the decisions of the Supreme Court carefully, they condemn dilution in the districts where it occurs. The fact that there is some dilution in Adams County for example doesn't mean you've got to [77] tear up a legislative district and Tishomingo and Alcorn where 90 percent of the people happen to be white anyway. So what I'm asking is have you ever told the legislature, I didn't quite get it from your, what you filed with the Supreme Court although I got a pretty good picture of it, you mentioned for example Marshall County and other counties, you suggested that it ought to be fixed where Marshall county for example could elect one representative on its own, I can't find any quarrel with that, and there are a lot of other things apparently that could be suggested by which the legislature could bring its Act into compliance as to the Fifteenth Amendment. I don't believe you had anything to do with the Fourteenth Amendment, do you, for the enforcement of Fourteenth Amendment rights?

BY MR. JONES: Only insofar as it has Fifteenth Amendment effects.

* * * *

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

Civil Action Number 3830

[Filed June 25, 1975]

PEGGY J. CONNOR, ET AL., PLAINTIFFS

v.

WILLIAM L. WALLER, GOVERNOR, ET AL., DEFENDANTS

ORDER

Pursuant to the remand of this case by the Supreme Court of the United States on June 9, 1975, this Court held a hearing in Jackson, Mississippi on June 20, 1975, at which the parties, represented by counsel, presented oral argument lasting the entire day. No further evidence was adduced; the parties expressly stipulating in open court that they preferred to stand on the evidentiary record as heretofore developed.

At said hearing, the original plaintiffs and the Department of Justice objected to the composition of certain legislative districts on the ground that they cancel or minimize black voting strength as follows:

A. Objected to by the original plaintiffs:

House Districts numbered 3, 9, 23, 24, 28, 30 and 37;

Senate Districts numbered 1, 8, 16, 18, 19, 24 and 27.

B. Objected to by the Department of Justice:

House Districts numbered 3, 9, 13, 14, 15, 17, 23, 24, 28, 29, 30, 31, 32, 33, 34, 37, 39 and 40.

Senate Districts numbered 1, 6, 8, 14, 15, 18, 19, 22, 24 and 25.

The legal and factual reasons for the asserted unconstitutional dilution of black voting strength in many of the legislative districts are so unclear as to leave the Court with no adequate basis for findings in this regard. This is especially true of the objections asserted by the Department of Justice. Some districts with black population majorities have been objected to, while others in the same category have not been challenged.

Therefore, the Department of Justice is requested, as soon as reasonably possible, to file memoranda with the Court specifically setting forth, *district by district*, the facts of record or of which this Court may take judicial notice, demonstrating the unconstitutional dilution of black voting strength as heretofore asserted by the Department of Justice. The original plaintiffs may file similar memoranda as to the districts to which they have objected, if they so desire.

This Court proposes, where necessary, to alter any legislative district so as to remedy any existing unconstitutional dilution of black voting strength, but more information is required for a judicial determination that the need exists, especially as to a number of districts named by the Department of Justice.

We request particular attention to those districts presently having a black majority population, since not all black population majority districts were objected to.

The requested memoranda need not be addressed to Hinds, Harrison and Jackson Counties as this Court is under a prior mandate from the Supreme Court of the United States concerning legislative districts in these counties.

The parties are hereby formally advised that the Court proposes to formulate a temporary plan for the election of Senators and Representatives for the 1975 election ONLY, the first primary being scheduled by law for August 5, 1975.

We find as a fact that a permanent plan for the reapportionment of legislative districts cannot now be formulated because there is not enough time between now and the August primaries to accomplish the necessary re-registration of voters, personally or administratively, nor to geographically realign voting precincts, Mississippi being a permanent registration state in which precinct boundaries (over 2,000 in the state) are fixed by local Board of Supervisors so as to fit within the boundaries of the five Supervisors Districts in each county (52 counties having been reapportioned under the one person-one vote rule since the census of 1970).

By the entry of this order, the parties are judicially informed that this Court proposes without unnecessary delay to formulate a permanent plan for the election of legislators in the quadrennial elections in 1979. When that shall have been accomplished, special elections may be ordered in those legislative districts where required by law, equity, or the Constitution of the United States.

The parties are likewise hereby informed that as to legislative districts altered by the temporary plan for 1975, an adequate period of time will be allowed for the qualification of candidates in the altered districts; however, those already qualified will remain so for the area in which they reside. If necessary, the printing of special ballots for the legislature in the altered districts will be ordered.

The scheduled elections for members of the legislature in 1975 will not be postponed.

Redistricting Jackson County:

The parties are informed that the Court presently intends in the temporary plan to comply with the mandate of the Supreme Court as to single member districts in Jackson County by taking the following action:

District 46

Jackson County, one Representative to be elected from each of the five Supervisors Districts.

District 42	Population
Perry County	9,065
Greene County:	
Beats 1, 2, 3 and 5	6,836
Total	15,891

12.6% off the statewide norm.

District 47	
George County	12,459
Beat 4 of Greene County	1,709
Beat 5 of Stone County	1,620
Total	15,788

12.6% off the norm.

This will leave *District 43* as follows:

Pearl River County	27,802
Stone County:	
Beats 1, 2, 3, and 4	6,480
Total	34,282

17,141 population per House Member
5.7% off the norm.

The Court is of the opinion that this plan is far preferable to creating a single member District of George County alone, which would be 31% off the norm.

The parties are requested to state their objections, if any, to this proposal.

The Court realizes that the above plan geographically fractures Greene and Perry Counties and that this violates the well defined, ancient public policy of the state of Mississippi of preserving the integrity of its county boundaries. We do it in this instance because there appears to be no other way to conform to the Supreme Court mandate. This is temporary only, for the 1975 elections, and is not to serve as a precedent in any other situation, although such fracturing may be unavoidably necessary in certain other instances to comply with the

Fifteenth Amendment and will, where required, be done for that reason.

Redistricting Harrison County

The parties are further advised that because of the absence of any viable alternative, the Court intends to conform as nearly as possible to the Supreme Court mandate as to Harrison County by directing that one Representative shall be elected from each of the five Supervisors Districts and two from the county at large, subject to the possibilities of special election if later, in the course of this litigation, this should be legally mandated.

The three Senators will be elected from Harrison County at large, it being now impossible, for lack of population statistics, to erect three Senatorial Districts of substantially equal size within the county.

If the parties have any valid objections to this temporary measure, they are requested to state them.

Redistricting Hinds County

The parties are informed that the specific method by which Hinds County is to be divided into single member districts as ordered by the Supreme Court is receiving the continuing consideration of the Court, which has come to no resolution thereon, except that as a temporary measure, the five Hinds County Senators will be chosen from single member districts, one from each of the five Supervisor's Districts in the county as recently reapportioned by the United States District Court. Candidates for said seats from said districts shall have until 5 o'clock p.m., C.S.T., Monday, July 7, 1975, in which to qualify as candidates. Those already qualified will remain candidates from the district in which they legally reside as of 5 o'clock p.m., C.S.T., Monday, July 7, 1975.

SO ORDERED by the unanimous direction of the Court, this June 25, 1975.

/s/ Harold Cox
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

[Filed Jul. 8, 1975]

Civil Action No. 3830

PEGGY J. CONNOR, ET AL., PLAINTIFFS

—*vs*—

WILLIAM L. WALLER, ET AL., DEFENDANTS

Order Establishing Certain Temporary Districts For The Election of Senators and Representatives in the Mississippi Legislature for the Year 1975 Only

COLEMAN, Circuit Judge:

No useful purpose would now be served by recapitulating the history of the repeatedly unsuccessful efforts of the Legislature and of this Court to reapportion Mississippi legislative districts. Since 1971, those efforts have failed at every turn, and the United States Supreme Court has never had an occasion to judge an entire Mississippi legislative reapportionment on its merits. In any event, as a matter of record, that history is set forth in detail in our recent opinion in this case, Connor v. Waller, May 19, 1975, —— F.Supp. ——.

That opinion went for naught on the ground that House Bill 1290 and Senate Bill 2976 of the Acts of the Mississippi Legislature, Regular Session of 1975, should have been cleared with the Attorney General of the United States under the Voting Rights Act of 1965, as amended. Therefore, our action in deciding the merits of the matter was in error, Connor v. Waller (No. 74-1509, June 5, 1975) —— U.S. ——.

In reversing and remanding the case on June 5, 1975, the Supreme Court said:

> "This reversal is, however, without prejudice to the authority of the District Court, if it should become appropriate, to entertain a proceeding to require the conduct of the 1975 elections pursuant to a court-ordered reapportionment plan that complies with this Court's decision in *Mahan* v. *Howell*, 410 U.S. 315 (1973), *Connor* v. *Johnson*, 404 U.S. 549 (1972), and *Chapman* v. *Meier*, —— U.S. —— (1975)."

Of the three cases thus cited for our future guidance, Connor v. Johnson, 404 U.S. 549, was our present case, then making its second appearance before the High Tribunal.[1]

The Court ascribed paramount importance to the fact that under our 1971 court-ordered plan 24 of the 122 members of the House of Representatives were elected at large from three large multimember districts, the Counties of Hinds (12), Harrison (7), and Jackson (5). Our judgment was vacated so that these Counties might be subdivided into single-member districts.

The remainder of the plan, however, was vacated for other reasons. Plaintiffs-appellants had contended that deviations from the population norm in the reapportionment of state legislatures were governed by the strict standards of *Kirkpatrick* v. *Preisler*[2] and *Wells* v. *Rockefeller*.[3]

In response to this the Supreme Court said:

> "If we are to consider the applicability of *Preisler* and *Wells* to state legislative districts, it would be preferable to have before us a final judgment with respect to the entire State (footnote omitted). To accomplish this result and to preserve the right to

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[1] Evidently, the Supreme Court intended to cite Connor v. Williams instead of Connor v. Johnson, as Connor v. Williams is reported at 404 U.S. 549, while an interlocutory appeal, Connor v. Johnson, is reported at 402 U.S. 690, 403 U.S. 928.

Our 1967 Plan, applying the 1960 Census, was not appealed.

[2] 394 U.S. 526, 89 S.Ct. 1225, 22 L.Ed.2d 519 (1969).

[3] 394 U.S. 542, 89 S.Ct. 1234, 22 L.Ed.2d 535 (1969).

appeal from such a judgment, the judgment of the District Court is vacated, except insofar as it applied to the 1971 elections, and the case is remanded to the District Court for further proceedings consistent with this opinion."

This became a moot point, of course, when the Supreme Court held that *Preisler* and *Wells* standards do not apply to state legislative reapportionments, Mahan v. Howell, 410 U.S. 315, 93 S.Ct. 979, 35 L.Ed.2d 320 (1973). *Mahan* held that state legislative reapportionment is to be judged by the equal protection test enunciated in Reynolds v. Sims, 377 U.S. 533, 84 S.Ct. 1362, 12 L.Ed.2d 506 (1964).

If *Connor* alone had been cited in the Supreme Court remand we would have understood it to be an inflexible command to divide Hinds, Harrison, and Jackson Counties into single-member districts, undoubtedly so as to the House of Repreesntatives.

The Court, quite correctly of course, did not stop there but proceeded specifically to direct our attention to the intervening decisions in *Mahan* (1973) and *Chapman* (1974). This does not mean, as we see it, that the commands of *Connor* are withdrawn but it does mean that our efforts to create a statewide reapportionment plan, temporary or permanent, must also take into consideration the intervening decisions.

Mahan did not precede Connor in point of time, but it was the first case mentioned in this remand.

We understand *Mahan* to stand for the proposition, as a one person-one vote matter, that in devising a court ordered plan for state legislative reapportionment the federal courts may not disregard an undoubted state policy of maintaining the integrity of traditional county boundaries if population variances are not excessive.

We understand *Chapman* v. *Meier* to lay down the following principles:

1. In a state traditionally using single-member districts for legislative reapportionment the federal courts should not impose multimember districts, absent particular pressing features calling for such;

2. Unless there are persuasive justifications, a court-ordered reapportionment plan of a state legislature must avoid use of multimember districts and must ordinarily achieve the goal of population equality with little more than *de minimus* variation. Where important and significant state considerations rationally mandate departure from these standards it is the responsibility of the reapportioning court to articulate precisely why a plan of single-member districts with minimal population variance cannot be adopted.

Chapman points out that "the preference for and emphasis upon single-member districts in court ordered plans" was reaffirmed in *Mahan* v. *Howell* but proceeded to point out that when a plan is court-ordered "there often is no state policy of multimember districting which might deserve respect or deference. Indeed, if the court is imposing multimember districts upon a state which always has employed single-member districts, there is special reason to follow the *Connor* rule favoring the latter type of districting". While the Court did not say so, that not being the situation at issue, we hardly see how a federal court would have any more right to deprive a state of its multimember policy in a one person-one vote context, especially where necessary to preserve the integrity of county boundaries.

We do not understand *Chapman* to have in any way modified the basic principles of *Mahan*, especially since *Mahan* is cited with approval for the handling of population divergences "based on legitimate considerations incident to the effectuation of a rational state policy".

Finally, *Chapman* repeated that each case must be evaluated on its own facts. This, we think, negates the accuracy of the argument of the plaintiffs, repeatedly and agressively pressed, that *Chapman* lays down a *per se* rule that court-ordered legislative reapportionment plans must, without exception, provide for single member districts, regardless of any rational state policy to the contrary.

As the Supreme Court directed, we shall do our best to appropriately apply the teachings of all three cases mentioned in its remand order.

The County as the Basic Unit of State Government

Since before the admission of Mississippi as the Twentieth State in the American Union, the County has been the sole, inviolate, basic unit of state and local government.

The Act of Congress, passed March 1, 1817, provided that the delegates to the Constitutional Convention called to establish the new state should be elected as follows:

County	Number of Delegates
Warren (Vicksburg)	2
Claiborne	4
Jefferson	4
Adams (Natchez)	8
Franklin	2
Wilkinson	6
Amite	6
Pike	4
Lawrence	2
Marion	2
Hancock	2
Wayne	2
Greene	2
Jackson	2

The Mississippi Legislative Apportionment Act of May 12, 1837, at a time, unhappily, when black people were held in slavery and could not vote, set up 24 multimember districts for the election of Representatives (2 to 4 members per district, none of which fractured county lines). No Senatorial district fractured a county line.

By 1846 the state had 22 multiple member House districts, electing from two to four members each. No county line was fractured. Hutchinson's Mississippi Code of 1848, Pages 377, 378.

The Mississippi Constitutional Convention of 1868, overwhelmingly controlled by the newly liberated slaves and their friends, most of them recent arrivals in Mississippi, provided that twenty-nine counties should elect

anywhere from two to five Representatives per county, Article XI, Mississippi Constitution of 1869, Revised Code of 1871, Page 665.

Section 254 of the Mississippi Constitution of 1890 provided that twenty-five counties should elect two Representatives each and that eleven counties should elect three Representatives each. In the three Representatives group were the preponderantly black counties of Copiah, Holmes, Marshall, Noxubee, Panola, Warren, Washington, Yazoo, and Lowndes. No county line was fractured.

Section 255 of the Mississippi Constitution of 1890 also erected Senatorial districts choosing from two to three Senators. No county line was fractured.

This reapportionment remained in effect until the Mississippi Constitution was amended in 1963 under the impact of *Baker* v. *Carr*. Multimember districts were continued and no county lines fractured.

Indeed, Section 160 of the Mississippi Constitution of 1890 provided that no existing county boundary might be altered without the consent of a majority of the qualified electors, as follows:

> "No new county shall be formed unless a majority of the qualified electors voting in each part of the county or counties proposed to be dismembered and embraced in the new county, shall separately vote therefor; nor shall the boundary of any judicial district in a county be changed, unless, at an election held for that purpose, two-thirds of those voting assent thereto. The elections provided for in this and the section next preceding shall not be held in any county oftener than once in four years. No new county shall contain less than four hundred square miles; nor shall any existing county be reduced below that size.

Section 271 of the Mississippi Constitution of 1890 provided that the Legislature might consolidate existing counties if a majority of the qualified electors of such counties should vote therefor. In 1966, (Chapter 691, Laws of 1966) the people approved a constitutional amendment which would have allowed consolidation (but

not fracturing) of existing counties by a two-thirds vote of the elected members of each House of the Legislature. It appears that this provision has never become operative under Section 5 of the Voting Rights Act of 1965.

The 1962 legislative reapportionment amendments to the 1890 Constitution, approved by the people at the polls, provided that in counties having more than one Representative, the Legislature might *divide such county into districts* for the election of Representatives. Authority to fracture county lines is notably lacking.

As in Virginia (Mahan v. Howell, *supra*), Section 89 of the Constitution of 1890 provides for a system of local and private legislation, often used in connection with the local problems of counties and their subdivisions:

> "Section 89. There shall be appointed in each house of the legislature a standing committee on local and private legislation; the house committee to consist of seven representatives, and the senate committee of five senators. No local or private bill shall be passed by either house until it shall have been referred to said committee thereof, and shall have been reported back with a recommendation in writing that it do pass, stating affirmatively the reasons therefor, and why the end to be accomplished should not be reached by a general law, or by a proceeding in court; or if the recommendation of the committee be that the bill do not pass, then it shall not pass the house to which it is so reported unless it be voted for by a majority of all members elected thereto. If a bill is passed in conformity to the requirements hereof, other than such as are prohibited in the next section, the courts shall not, because of its local, special, or private nature, refuse to enforce it."

The sum of all this is that from the beginning of Statehood, for 148 years, Mississippi has traditionally, historically, and constitutionally adhered to an unswering policy of preserving the integrity of county boundaries, of using the county as the sole, basic unit of state government, and as the jurisdiction from which it elected

its legislators. Upon the hearing of this case, counsel for the plaintiffs candidly conceded in open court that they knew of no instance in which Mississippi had departed from this policy.

Under the teachings of *Mahan* v. *Howell*, recognized in *Chapman* v. *Meier*, we hold that in the enforcement of the one person-one vote rule (where no racial discrimination in voting is involved) this Court should respect this 148 year old policy and should be lead to breach it for only the most compelling reasons.

As will later be seen in the course of this opinion, we have breached the county boundaries of Greene and Stone Counties. We did this with the greatest reluctance, but at this time there was no other way to divide Jackson County into five single-member districts as the Supreme Court had specifically directed us to do.

We did not wish to so much as appear to disobey a Supreme Court order but our resolution to break up Greene and Stone was an uneasy one because we knew that State policy in this regard had not been presented to the Supreme Court in 1971-72. Moreover, the Supreme Court did not tell us to destroy the integrity of any county boundaries, they told us only to *divide* the *Counties* into single-member districts. In any event, the peculiar geographical location of George County and the population quotients involved appear to give us no other choice. We take note of the written protests from Greene and Stone Counties filed with this Court since our Order of June 25, 1975, but defer consideration thereof until we begin formulation of the permanent plan.

BACKGROUND

Except in extremely rare instances, Democratic party nominations to a House or Senate seat in the Mississippi Legislature is tantamount to election. Such nominees are rarely opposed in the general election.

The practical effect is that, with few exceptions, Senators and Representatives are elected in the Democratic primaries. The first Democratic primary is scheduled by law for August 5, 1975, with a second primary three

weeks later in those instances where no candidate receives a majority in the first primary. Nomination by majority has been the law in Mississippi since primary elections were first required in 1902.

Surely, the purpose of the one person-one vote rule and of the Voting Rights Act of 1965 is not that voters shall not be allowed to vote at all. We feel that elections should be postponed only for the most cogent reasons. We have determined that no irreparable injury will occur by allowing the 1975 legislative elections to proceed under a temporary plan on the dates provided by law. If the permanent plan, later to be adopted, manifests that the temporary plan has caused such an injury the same will be corrected by special elections as provided by Mississippi law. We think that to halt the elections scheduled for August 5 and August 26 would be a perversion of the electoral process for which no substantial justification appears in the record.

Obviously, in the time available, with the data at hand, and the resources available, this Court cannot possibly hope to devise a permanent districting plan for the election of Senators and Representatives in the Mississippi Legislature. We do believe, however, that we can devise a plan for the 1975 elections, and for those elections only, which substantially will comply, as nearly as reasonably possible, with the one person-one vote rule, and in which black voting power in the various legislative jurisdictions will not be unconstitutionally diluted, minimized, or cancelled.

Thereafter, in due course of events, as speedily as judicially possible, we propose to set up a permanent plan for the election of Senators and Representatives in plenty of time for it to be submitted to the scrutiny of the Supreme Court of the United States and be fully operative far enough in advance of the election year of 1979 in order that the confusion which has reigned rampant this year will not arise to plague voters, candidates, and courts alike. We delayed doing this following the 1972 Supreme Court decision because we sincerely expected the Legislature to formulate a reapportionment. This it did in 1973 and 1975. Since these fell by the way

we can no longer rely on that hope. This is not to say that the Legislature is not as free as it ever was to enact a plan of its own devising.

DEVISING THE TEMPORARY PLAN FOR 1975

In this connection, we need to make plain the method by which elections in Mississippi have to be conducted (and have been conducted long before the enactment of the Voting Rights Act of 1965):

(1) From the very beginning of the primary election process, Mississippi has maintained a system of permanent registration of voters. Once a voter registers within the precinct where he lives he need never register again as long as he continues to reside there. Permanent registration records are kept accordingly. At long intervals, Boards of Supervisors in the eighty-two counties, being vested with the jurisdiction to do so, sometimes order a complete new registration of voters so as to eliminate the names of those who have moved or died, the purpose being to update the poll books for more convenient and effective administration. Such a re-registration cannot now be ordered without the consent of the Attorney General of the United States under Section 5 of the Voting Rights Act. The record shows instances in which that Official has objected to such re-registrations because it would put the black voters to the inconvenience of registering again and might thus diminish the black vote.

(2) Since 1817 each County has been divided into five districts (sometimes referred to as Beats). The Board of Supervisors (the governing body of the County), School Board Members, Justice of the Peace, and District Constables are elected from these Beats individually.

(3) It necessarily follows that voting precincts must be established within, and co-extensive with, these five districts; otherwise, there would be no way of electing these locally chosen officials. In other words, if a voting precinct straddled a Beat line, it would be impossible to confine voter registration records to those entitled to vote for Supervisor, School Board Member, Justice of

the Peace, or Constable in any particular Beat and it would be impossible to confine the vote on those officials to the districts they are being elected to serve.

The result is that a voting precinct must be wholly within the same Beat; precincts simply cannot straddle Beat lines. As Rome was not built in a day, so has it required much time to reapportion the counties in Mississippi into five supervisors districts of substantially equal population, Avery v. Midland County, Texas, 390 U.S. 474, 88 S.Ct. 1114, —— L.Ed.2d ——. We judicially notice that under this rule 52 of the 82 counties in Mississippi have been reapportioned since 1970, when the last federal census was taken. It inevitably results that in 52 counties voting precincts have been realigned and permanent registration records amended to conform to the new Beat boundaries. District population figures as reflected by the 1970 Census have been correspondingly altered. In some instances those new figures can be gleaned from federal court orders reapportioning the county, but not always. However, we can assume that the population of the Beat amounts to approximately one-fifth of the total county population in 1970. The difficulty comes when we try to deal with smaller areas within the Beat, covered, as they all are, by existing precincts. At present, there simply is no way to know the population of a voting precinct.

Formerly, the Census Bureau compiled population figures by voting precinct. This the Bureau no longer does. Population by census enumeration districts or by census tracts are of no help in arriving at reapportionment figures by precinct because they rarely coincide with the boundaries of a voting precinct. They did coincide, as we understand it, with existing precinct boundaries in the City of Jackson prior to the city expansions which have occurred since 1970.

The obviously simple solution would be to compile population statistics by precinct, which the Census Bureau formerly did, at least as late as 1920. Possibly the method has been changed to comply with computer procedures. As to this, we are not advised.

In any event, elections in Mississippi have to be conducted by precinct, beat, and county, else the entire procedure would be reduced to inoperable confusion.

It is obviously now too late in the day to undertake a statewide shifting of voting precincts or to take a special census of population by precincts. Consequently, the Beat, or supervisors district, is presently the smallest identifiable unit upon which we can rely in the formulation of a temporary plan.

We must do the best we can with what we have to do with, and this the Court has done, after hundreds of hours of intensive effort on the part of the Judges and their staffs, assisted by such relevant data as the parties have supplied us in usable form.

THE PLAN FOR 1975

The first thing we have to do is to reapportion Hinds, Harrison, and Jackson Counties in compliance with the 1972 mandate of the Supreme Court. Then, in other areas where there is no reasonable appearance of a potential for impermissibility diluting black voting strength we shall follow our 1971 plan.

We cannot now follow the various plans offered on behalf of the plaintiffs because they do not conform to existing voting precinct lines, with appropriate population statistics. Legislative districts set up along the lines proposed by the plans would, at this stage, throw the legislative electoral process into indescribable chaos. Where necessary to avoid dilution of black voting strength, however, we shall use Beat population statistics, and in the City of Jackson, Hinds County, we can use precinct population statistics in setting up single member districts for Hinds County.

The original plaintiffs and the Department of Justice have objected to the composition of certain legislative districts, Senate and House, as impermissibly diluting black voting strength. We requested the Department of Justice to articulate its reasons as to each district individually. This has been done, the document setting forth the objections having been received by this Court on July 5, 1975.

The disposition of these objections, district by district, including those raised by the original plaintiffs, will be set forth in a supplemental opinion later to be issued as soon as the contentions can be fully considered. We recognize that this must be accomplished by July 11, if candidates in the newly formed districts are to be allowed ten days in which to qualify, and if the ballots are to be printed in time for the first primary on August 5.

In the meantime, in order that the usual, customary election procedures may move forward, we herewith announce the formulation of those legislative districts, on a temporary basis for the 1975 elections only, as presently reconstituted with reference to the Counties of Hinds, Harrison, and Jackson (and Counties affected thereby) and in those Counties in which no racial dilution objections have been raised.

Qualifying deadlines for Senatorial candidates in the new districts in Hinds County have previously been extended to July 7, 1975. The same deadlines for Senatorial and Representative Districts in Harrison, Jackson, George, Greene, Perry, Stone and Pearl River Counties are now likewise extended until 5 o'clock P.M., CDST, July 14, 1975. Qualifying deadlines will not be extended in the other legislative districts hereinafter named for there has been no territorial change in these districts. although some have been renumbered for the sake of clarity.

RECONSTITUTION OF LEGISLATIVE DISTRICTS IN HINDS, HARRISON, AND JACKSON COUNTIES

I

STATE SENATE

Senatorial District 22.	Hinds County, Supervisor District 1.
Senatorial District 22A.	Hinds County, Supervisor District 2.
Senatorial District 22B.	Hinds County, Supervisor District 3.
Senatorial District 22C.	Hinds County, Supervisor District 4.
Senatorial District 22D.	Hinds County, Supervisor District 5.
Senatorial District 32.	Harrison County, three Senators, to be elected Posts 1, 2, and 3, County-wide.
Senatorial District 33.	Jackson County, two Senators, to be elected Posts 1 and 2, County-wide.

II

HOUSE OF REPRESENTATIVES

District 46.	Jackson County, Supervisor District 1.
District 46A.	Jackson, County, Supervisor District 2.
District 46B.	Jackson County, Supervisor District 3.
District 46C.	Jackson County, Supervisor District 4.
District 46D.	Jackson County, Supervisor District 5.
District 42.	Perry County and Supervisor Districts 1, 2, 3, and 5 of Greene County.
District 47.	George County, Supervisor District 4 of Greene County, and Supervisor District 5 of Stone County.
District 43.	Pearl River County and Supervisor Districts 1, 2, 3, and 4 of Stone County. 2 Representatives, Posts 1 and 2.
District 45.	Harrison County, Supervisor District 1.
District 45A.	Harrison County, Supervisor District 2.
District 45B.	Harrison County, Supervisor District 3.
District 45C.	Harrison County, Supervisor District 4.
District 45D.	Harrison County, Supervisor District 5.
District 45E.	Harrison County, at-large, two Representatives, Posts 1 and 2.

This plan erects twelve single-member House districts where formerly there were three. Harrison County has only recently been redistricted by the United States District Court for the Southern District of Mississippi. We have no available or usable data by which to divide Harrison County into three single Senatorial Districts of substantially equal population while at the same time preserving the viability of the electoral process. The same must be said as to dividing the County into seven single-member districts for the election of Representatives. Consequently, we have gone as far as possible in this temporary arrangement to comply with the directions of the Supreme Court that Harrison County shall be divided into single-member districts. Also, there is no way by which Jackson County, with five supervisor districts, can be divided into two single-member Senatorial districts.

For further explanation, as to population and the fracturing of county boundaries, see our Order of June 25, 1975.

The Department of Justice in a formal statement filed with this Court, advises that it has no objection to the foregoing division of Harrison and Jackson Counties for the election of Representatives.

We hope to divide Hinds County into single member districts for the election of Representatives, or as nearly as possible thereto, which will be announced in a subsequent order.

The Department of Justice and the original plaintiffs object to the election of one Senator from each of the supervisor districts in Hinds County as diluting black voting strength. Hinds County, however, has only recently been reapportioned by a judgment of the United States District Court for the Southern District of Mississippi, in which two of the four supervisor districts are adjudicated to contain a black population majority. By formal order the Fifth Circuit Court of Appeals has declined summary reversal and a stay of this judgment. We, therefore, conclude that until such plan shall be reversed on the merits, we should follow it as the most feasible presently existing method of dividing Hinds County into five Senatorial Districts. Voting precincts have been adjusted to comply with Beat (district) lines, so there will be no confusion in the electoral process.

III

OTHER SENATORIAL DISTRICTS

(For Population Statistics see 330 F.Supp. at 509)

District Number	Counties	Number of Senators
2	Benton, Pontotoc, and Union	1
3	Alcorn and Tippah	1
5	Lee	1
7	Calhoun, Choctaw, Montgomery, and Webster	1

District	Counties	Number of Senators
17	Neshoba and Winston	1
20	Newton and Scott	1
21	Rankin	1
26	Pike and Walthall	1

IV

HOUSE DISTRICTS

District	County or Counties	Number of Representatives
1	Alcorn	1
1A	Benton and Tippah	1
1B	Alcorn, Benton, and Tippah (Flotorial District)	1
2	Prentiss and Tishomingo Posts 1 and 2 Post 1 shall be filled by a resident of Prentiss (20,133) Post 2 shall be filled by a resident of Tishomingo (14,940)	2
4	Lee Posts 1 and 2	2
4A	Monroe	1
4B	Itawamba	1
4C	Itawamba, Lee, and Monroe (Flotorial District)	1
5	Chickasaw	1
6	Pontotac	1
7	Union	1
10	Tate	1
11	Coahoma Posts 1 and 2	2

District	County or Counties	Number of Representatives
11A	Quitman and Tunica	1
11B	Coahoma, Quitman, and Tunica (Flotorial District)	1
12	Tallahatchie	1
13	Sunflower Posts 1 and 2	2
16	Holmes and Humphreys (The District presently has a Representative who is of the Negro race). Posts 1 and 2	2
19	Attala	1
20	Winston	1
21	Choctaw and Webster	1
22	Clay	1
25	Newton	1
25A	Clarke and Jasper	1
25B	Newton, Clarke, and Jasper (Flotorial District)	1
26	Leake and Neshoba Posts 1 and 2 Candidates for Post 1 shall be residents of Neshoba County; those for Post 2 shall be residents of Leake County.	2
27	Scott and Smith Posts 1 and 2	2
35	Pike	1
35A	Lincoln	1

District	County or Counties	Number of Representatives
35B	Pike and Lincoln (Flotorial District)	1
36	Simpson	1
38	Marion and Walthall Posts 1 and 2	2
41	Wayne	1
44	Hancock	1

Candidates qualified in these Senatorial and House Districts as of the June 5 deadline shall remain so, under the appropriate district designation, the actual method of selection from an area standpoint remaining unchanged from that of 1971.

Of the 42 Representatives to be elected from the above designated Representative Districts, candidates will be required to run in more than two counties in only four instances (flotorial districts, required to comply with one person-one vote).

The above Representative district arrangements designate forty-seven single-member districts and nine districts which will elect two members. A rearrangement of the districts by fracturing county lines along Beat lines offers no substantial improvement in population variances. This problem will have further study in the compilation of a permanent plan.

None of the parties to this litigation have objected to any of the districts except the Hinds County Senatorial Districts on the ground that they present a potential for diluting black voting strength. Therefore, at this hour we have included the two member districts as presently unavoidable and have concluded that the composition of these districts should be released now so that orderly election procedures in those areas, now delayed for a month, may go forward.

The within and foregoing shall, as far as it reaches, constitute the Findings of Fact and the Judgment of the Court.

The Clerk of this Court shall forthwith furnish a true copy hereof to the Secretary of State of the State of Mississippi and to each County Registrar in the affected county for the information of those charged with the duty of preparing and distributing the 1975 primary election ballots.

SO ORDERED, ADJUDGED, and DECREED, This 8 day of July, 1975.

/s/ Jas. P. Coleman
United States Circuit Judge

/s/ Dan M. Russell, Jr.
Chief United States
District Judge

/s/ Harold Cox
United States District Judge

APPENDIX

Our 1967 Legislative Reapportionment Plan, 265 F. Supp. 499, was not appealed.

After the 1970 Census this Plan had to be revised, Connor v. Johnson, 330 F. Supp. 506, 521, because changes in population numbers and shifts in population location had put the 1967 districts out of compliance with the one person-one vote rule.

Between 1960 and 1970 the white population of Mississippi increased by 137,125—from 1,257,546 to 1,394,-781. The black population decreased by 99,773—from 915,743 to 815,770. Expressed in round numbers, this represented a white population gain of 10% and a black population loss of 12%. The population norm for the election of both House and Senate Members shifted. For example, Noxubee County, an agricultural area, of preponderantly black population, was entitled to one Representative under the Census of 1960 but it lost 3,620 black people and gained only 120 in white population between 1960 and 1970, so was below the norm for a Representative and had to be combined with other territory.

In 1970 the 410 Supervisor Districts in Mississippi were grossly malapportioned. Fifty-two counties have since been redistricted. This leaves us with no dependable population figures for local county subdivisions, especially as to black population ratios. The accompanying 1970 Census tables reflect the enormity of this problem.

APPENDIX

The glaring malapportionment of Mississippi Counties as of 1970, since remedied in 52 counties, is shown by the following tables taken from official United States Census reports. From this, also, we may deduce the absolute inaccuracy of the 1970 Beat population figures as they must now stand subsequent to reapportionment. The enormity of the shift in voting precinct boundaries post 1970 is also clear.

Table 33. General Characteristics for County Subdivisions: 1970

[For minimum base for derived figures (percent, median, etc.) and meaning of symbols, see text]

County Subdivisions	Total
ADAMS	
Dist. 1	13 590
Dist. 2	1 073
Dist. 3	1 492
Dist. 4	15 074
Dist. 5	6 064
ALCORN	
Dist. 1	10 205
Dist. 2	4 983
Dist. 3	2 581
Dist. 4	7 500
Dist. 5	1 910
AMITE	
Dist. 1	3 687
Dist. 2	1 659
Dist. 3	4 332
Dist. 4	2 158
Dist. 5	1 927
ATTALA	
Dist. 1	12 053
Dist. 2	1 568
Dist. 3	1 272
Dist. 4	3 468
Dist. 5	1 230
BENTON	
Dist. 1	1 235
Dist. 2	1 647
Dist. 3	2 355
Dist. 4	763
Dist. 5	1 505
BOLIVAR	
Dist. 1	2 661
Dist. 2	9 266
Dist. 3	8 968
Dist. 4	21 654
Dist. 5	6 860
CALHOUN	
Dist. 1	2 772
Dist. 2	3 661
Dist. 3	2 613
Dist. 4	2 926
Dist. 5	3 051
CARROLL	
Dist. 1	480
Dist. 2	1 157
Dist. 3	1 799
Dist. 4	3 193
Dist. 5	2 568
CHICKASAW	
Dist. 1	5 755
Dist. 2	2 728
Dist. 3	5 279
Dist. 4	1 770
Dist. 5	1 773
CHOCTAW	
Dist. 1	1 578
Dist. 2	1 664
Dist. 3	1 220
Dist. 4	1 577
Dist. 5	2 401
CLAIBORNE	
Dist. 1	5 793
Dist. 2	1 279
Dist. 3	446
Dist. 4	1 528
Dist. 5	1 040
CLARKE	
Dist. 1	3 859
Dist. 2	3 179
Dist. 3	3 145
Dist. 4	3 960
Dist. 5	3 706
CLAY	
Dist. 1	3 698
Dist. 2	3 612
Dist. 3	3 680
Dist. 4	4 729
Dist. 5	3 811
COAHOMA	
Dist. 1	1 790
Dist. 2	3 604
Dist. 3	3 757
Dist. 4	29 085
Dist. 5	2 211
COPIAH	
Dist. 1	9 108
Dist. 2	3 044
Dist. 3	1 197
Dist. 4	1 564
Dist. 5	9 636

COVINGTON	
Dist. 1	2 371
Dist. 2	1 470
Dist. 3	4 179
Dist. 4	3 126
Dist. 5	2 856
DE SOTO	
Dist. 1	8 378
Dist. 2	14 527
Dist. 3	3 851
Dist. 4	2 129
Dist. 5	7 000
FORREST	
Dist. 1	26 992
Dist. 2	9 761
Dist. 3	17 572
Dist. 4	1 820
Dist. 5	1 704
FRANKLIN	
Dist. 1	1 671
Dist. 2	1 633
Dist. 3	1 739
Dist. 4	1 455
Dist. 5	1 504
GEORGE	
Dist. 1	5 960
Dist. 2	1 980
Dist. 3	1 514
Dist. 4	1 835
Dist. 5	1 170
GREENE	
Dist. 1	2 519
Dist. 2	1 334
Dist. 3	1 540
Dist. 4	1 220
Dist. 5	1 942
GRENADA	
Dist. 1	15 154
Dist. 2	1 370
Dist. 3	604
Dist. 4	1 833
Dist. 5	1 693
HANCOCK	
Dist. 1	1 410
Dist. 2	280
Dist. 3	1 335
Dist. 4	2 446
Dist. 5	11 866
HARRISON	
Dist. 1	23 151
Dist. 2	31 490
Dist. 3	17 976
Dist. 4	21 052
Dist. 5	41 595
HINDS	
Dist. 1	101 123
Dist. 2	7 182
Dist. 3	5 346
Dist. 4	65 464
Dist. 5	43 858
HOLMES	
Dist. 1	7 372
Dist. 2	6 724
Dist. 3	3 306
Dist. 4	1 377
Dist. 5	4 261
HUMPHREYS	
Dist. 1	7 116
Dist. 2	2 012
Dist. 3	1 981
Dist. 4	779
Dist. 5	2 713
ISSAQUENA	
Dist. 1	488
Dist. 2	202
Dist. 3	339
Dist. 4	1 021
Dist. 5	687
ITAWAMBA	
Dist. 1	2 888
Dist. 2	4 231
Dist. 3	2 650
Dist. 4	1 115
Dist. 5	5 763
JACKSON	
Dist. 1	4 712
Dist. 2	25 012
Dist. 3	28 297
Dist. 4	25 284
Dist. 5	4 670
JASPER	
Dist. 1	2 129
Dist. 2	1 652
Dist. 3	1 368
Dist. 4	5 998
Dist. 5	4 847
JEFFERSON	
Dist. 1	939
Dist. 2	1 757
Dist. 3	4 488
Dist. 4	1 258
Dist. 5	853
JEFFERSON DAVIS	
Dist. 1	5 270
Dist. 2	1 512
Dist. 3	2 780
Dist. 4	1 581
Dist. 5	1 792
JONES	
Dist. 1	28 908
Dist. 2	7 217
Dist. 3	7 541
Dist. 4	8 993
Dist. 5	3 698
KEMPER	
Dist. 1	1 898
Dist. 2	1 579
Dist. 3	1 774
Dist. 4	2 191
Dist. 5	2 791
LAFAYETTE	
Dist. 1	3 701
Dist. 2	3 541
Dist. 3	3 388
Dist. 4	8 100
Dist. 5	5 451
LAMAR	
Dist. 1	4 046
Dist. 2	3 138
Dist. 3	1 264
Dist. 4	3 762
Dist. 5	2 999
LAUDERDALE	
Dist. 1	16 771
Dist. 2	14 686
Dist. 3	12 418
Dist. 4	12 503
Dist. 5	10 709
LAWRENCE	
Dist. 1	4 223
Dist. 2	1 314
Dist. 3	1 817
Dist. 4	1 592
Dist. 5	2 191
LEAKE	
Dist. 1	2 669
Dist. 2	6 430
Dist. 3	1 684
Dist. 4	1 602
Dist. 5	4 620
LEE	
Dist. 1	3 967
Dist. 2	4 031
Dist. 3	21 426
Dist. 4	11 434
Dist. 5	3 290
LEFLORE	
Dist. 1	2 536
Dist. 2	2 999
Dist. 3	27 651
Dist. 4	5 515
Dist. 5	3 410
LINCOLN	
Dist. 1	14 066
Dist. 2	3 015
Dist. 3	2 327
Dist. 4	3 621
Dist. 5	3 159
LOWNDES	
Dist. 1	9 124
Dist. 2	24 849
Dist. 3	11 293
Dist. 4	2 221
Dist. 5	2 313
MADISON	
Dist. 1	14 684
Dist. 2	3 393
Dist. 3	6 491
Dist. 4	2 780
Dist. 5	2 389

MARION	
Dist. 1	7 148
Dist. 2	3 564
Dist. 3	3 719
Dist. 4	2 798
Dist. 5	5 622
MARSHALL	
Dist. 1	9 425
Dist. 2	3 647
Dist. 3	6 011
Dist. 4	2 748
Dist. 5	2 196
MONROE	
Dist. 1	12 173
Dist. 2	2 506
Dist. 3	3 665
Dist. 4	10 133
Dist. 5	5 566
MONTGOMERY	
Dist. 1	2 261
Dist. 2	1 855
Dist. 3	821
Dist. 4	2 293
Dist. 5	588
NESHOBA	
Dist. 1	10 785
Dist. 2	1 733
Dist. 3	2 210
Dist. 4	3 946
Dist. 5	2 128
NEWTON	
Dist. 1	3 442
Dist. 2	3 379
Dist. 3	3 185
Dist. 4	6 184
Dist. 5	2 793
NOXUBEE	
Dist. 1	2 627
Dist. 2	832
Dist. 3	4 976
Dist. 4	2 899
Dist. 5	2 934
OKTIBBEHA	
Dist. 1	19 076
Dist. 2	2 943
Dist. 3	2 482
Dist. 4	1 851
Dist. 5	2 400
PANOLA	
Dist. 1	4 181
Dist. 2	3 261
Dist. 3	4 867
Dist. 4	2 825
Dist. 5	11 695
PEARL RIVER	
Dist. 1	4 547
Dist. 2	1 131
Dist. 3	1 976
Dist. 4	15 316
Dist. 5	4 832
PERRY	
Dist. 1	1 640
Dist. 2	1 619
Dist. 3	3 187
Dist. 4	2 387
Dist. 5	832
PIKE	
Dist. 1	2 269
Dist. 2	8 224
Dist. 3	1 911
Dist. 4	16 476
Dist. 5	2 876
PONTOTOC	
Dist. 1	2 500
Dist. 2	2 944
Dist. 3	3 053
Dist. 4	6 813
Dist. 5	2 453
PRENTISS	
Dist. 1	9 441
Dist. 2	2 020
Dist. 3	3 891
Dist. 4	2 050
Dist. 5	2 731
QUITMAN	
Dist. 1	3 585
Dist. 2	1 279
Dist. 3	5 445
Dist. 4	1 092
Dist. 5	4 487

RANKIN	
Dist. 1	8 336
Dist. 2	27 261
Dist. 3	2 172
Dist. 4	3 736
Dist. 5	2 428
SCOTT	
Dist. 1	7 308
Dist. 2	7 752
Dist. 3	5 674
Dist. 4	2 392
Dist. 5	3 223
SHARKEY	
Dist. 1	225
Dist. 2	1 687
Dist. 3	2 773
Dist. 4	2 298
Dist. 5	1 954
SIMPSON	
Dist. 1	8 746
Dist. 2	4 030
Dist. 3	4 108
Dist. 4	1 572
Dist. 5	1 491
SMITH	
Dist. 1	2 872
Dist. 2	3 207
Dist. 3	2 840
Dist. 4	2 435
Dist. 5	2 207
STONE	
Dist. 1	1 891
Dist. 2	1 124
Dist. 3	2 052
Dist. 4	1 660
Dist. 5	1 374
SUNFLOWER	
Dist. 1	3 247
Dist. 2	5 331
Dist. 3	11 898
Dist. 4	4 347
Dist. 5	12 224
TALLAHATCHIE	
Dist. 1	1 196
Dist. 2	4 666
Dist. 3	2 694
Dist. 4	4 684
Dist. 5	6 078
TATE	
Dist. 1	1 957
Dist. 2	2 459
Dist. 3	4 137
Dist. 4	7 102
Dist. 5	2 889
TIPPAH	
Dist. 1	3 134
Dist. 2	7 042
Dist. 3	2 613
Dist. 4	1 526
Dist. 5	1 535
TISHOMINGO	
Dist. 1	5 007
Dist. 2	2 762
Dist. 3	1 404
Dist. 4	2 070
Dist. 5	3 697
TUNICA	
Dist. 1	1 200
Dist. 2	5 158
Dist. 3	2 038
Dist. 4	1 385
Dist. 5	1 973
UNION	
Dist. 1	1 952
Dist. 2	3 851
Dist. 3	9 744
Dist. 4	2 251
Dist. 5	1 298
WALTHALL	
Dist. 1	1 676
Dist. 2	4 205
Dist. 3	2 653
Dist. 4	1 563
Dist. 5	2 463
WARREN	
Dist. 1	9 827
Dist. 2	7 566
Dist. 3	6 217
Dist. 4	7 539
Dist. 5	13 832

WASHINGTON	
Dist. 1	1 898
Dist. 2	3 428
Dist. 3	47 231
Dist. 4	11 502
Dist. 5	6 522
WAYNE	
Dist. 1	2 936
Dist. 2	6 904
Dist. 3	1 389
Dist. 4	3 018
Dist. 5	2 383
WEBSTER	
Dist. 1	3 993
Dist. 2	915
Dist. 3	1 143
Dist. 4	2 597
Dist. 5	1 399
WILKINSON	
Dist. 1	4 646
Dist. 2	1 243
Dist. 3	3 103
Dist. 4	643
Dist. 5	1 464
WINSTON	
Dist. 1	3 867
Dist. 2	3 954
Dist. 3	3 180
Dist. 4	3 665
Dist. 5	3 740
YALOBUSHA	
Dist. 1	3 128
Dist. 2	2 845
Dist. 3	3 248
Dist. 4	2 056
Dist. 5	638
YAZOO	
Dist. 1	3 408
Dist. 2	3 012
Dist. 3	16 680
Dist. 4	2 753
Dist. 5	1 451

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

[Filed Jul. 11, 1975]

Civil Action No. 3830(A)

PEGGY J. CONNOR, ET AL., PLAINTIFFS

—*vs*—

WILLIAM L. WALLER, ET AL., DEFENDANTS

Order Establishing Certain Temporary Districts For The Election of Senators and Representatives in the Mississippi Legislature for the Year 1975 Only

COLEMAN, Circuit Judge:

This opinion represents a continuation of the efforts of this Court to devise a temporary reapportionment plan for the Mississippi Legislature in time for the holding of the regular 1975 Democractic primaries on August 5 and August 26.

Our prior order of June 25, 1975, and our opinion of July 8, 1975, are included in this opinion by reference.

In the opinion of July 8, 1975, we described the duties imposed upon this Court by the previous remands of the Supreme Court of the United States. We demonstrated the indisputable fact that the County has been, and is, the sole, inviolate, basic unit of state and local government in Mississippi. Incidental thereto, we further demonstrated that no county line in the 158 year history of Mississippi had ever been fractured for the purpose of erecting legislative districts, the uniform policy being to maintain the integrity of county boundaries. We held that in the observance of the one person-one vote rule this Court should respect that policy and should allow only the most compelling reasons to cause a departure from it.

We further demonstrated that from the beginning Mississippi has extensively used multi-member and multi-county legislative districts.

Moreover, we outlined Mississippi's three tiered election machinery (precinct-county-state) which render it impossible at this time and on short notice to re-register voters or realign voting precincts, the unavoidable result being that the 1975 elections will have to be conducted by this existing machinery, or not at all.

We now consider the last remaining issue in this legislative reapportionment situation—the objections raised by the original plaintiffs and by the Department of Justice to the 1971 court-ordered composition of various legislative districts on the ground that they impermissibly cancel, minimize, or dilute black voting strength.

Generally speaking, the two significant factors involved in impermissible dilution of black voting strength are: (1) a purpose to dilute, or (2) *resulting* dilution, even when not caused by a design to produce such a result.

Striving, as we are, for a court-ordered plan, there is no state action. Both the action and the results are court-conceived and court-caused.

When, after extended effort and labor, we formulated the 1971 reapportionment plan, we very deliberately said:

> "[W]e have cast to one side any purpose of discrimination or favoritism of any kind." 330 F.Supp. at 508.

It ought not to have to be said, but we say it nevertheless, that this Court, absolutely, has no intent, purpose, or design to deprive any citizen of the State of Mississippi of the lawful weight of his individual vote, *and certainly not for racial reasons.* The question is thus narrowed to a determination of whether the temporary reapportionment plan to be ordered by us has the effect of diluting black voting strength, judged by appropriate legal standards.

As will be seen hereinafter we are changing some of the 1971 legislative districts for the reasons stated thereasto. As to those left unchanged we either find no dilution or no way to make a change to meet the asserted dilution.

Our former opinion in this case, dated May 19, 1975, —— F.Supp. ——, found as a fact (reversed on other grounds) that in the electoral processes black citizens are not now suffering from the impact of past discrimination; that they are not hindered, hampered, or in any way impeded in registering to vote, or in voting, for candidates of their individual choice.

We there concluded:

> "As a matter of fact, it is obvious that the Voting Rights Act of 1965 has effectually reduced all such racially discriminatory factors to what honestly may be determined an irreducible minimum."

In the present opinion, we include by reference, all of the facts and considerations set forth in the May 19 opinion negating the presence of racial discrimination in the electoral processes of this State.

At the hearing held in this Court subsequent to the most recent Supreme Court remand we expressly offered the parties an opportunity to submit further evidence on this subject. Including the Department of Justice, they all stated that they preferred to stand on the record as it existed at the time of our prior opinion. No further evidence was offered.

In the light of the foregoing, any possible dilution as to each individual legislative district and any resulting dilution as to the composition of either the House or Senate, as a whole, must be judged on whether, good purpose notwithstanding, the arrangement of the particular district and the state-wide result have the *effect* of dilution.

The standard was recently prescribed by the Supreme Court in City of Richmond, Virginia v. United States [No. 74-201, June 24, 1975], —— U.S. ——: In the newly constituted governmental unit blacks must be afforded the representation reasonably equivalent to their political strength. The test is not what existed before the change, but what prevails after the change.

In *City of Richmond*, the Court said:

> "As long as the Ward system fairly reflects the strength of the Negro community as it exists after the annexation we cannot hold, without more specific legislative directions, that such an annexation is nevertheless barred by Section 5."

Moreover, we call attention to the teachings of Wallace v. House [No. 74-2654, slip opinion dated July 7, 1975] 5 Cir., 1975, —— F.2d ——, J. Goldberg:

No racial or political group has a constitutional right to be represented in proportion to its numbers.

No such group is constitutionally entitled to an apportionment structure designed to maximize its political advantage.

The critical question is whether the challenged political system has a demonstrably adverse effect on the political fortunes of a particular group.

Another critical question is whether the effect is invidiously discriminatory, that is, fundamentally unfair.

The existence of a black population majority is not dispositive of the dilution issue, for it is not population but access to the political process that determines whether an interest group enjoys the full vigor of its political rights.

We begin our analysis of the objections filed by the original plaintiffs and by the Department of Justice by identifying the twenty five counties in Mississippi which had a black majority population at the Census of 1970. Then, we shall examine the treatment given these black counties in the reapportionment which we ordered in 1971 and which the Legislature essentially adopted as its own in 1975.

This analysis has been given the most intensive attention, including a lengthy informal conference between the Court and respective counsel on July 7, 1975. In some instances the black population ratio of a particular district might be increased by certain alterations but these alterations would run afoul of the limitations imposed by population norms. An over-all deviation of more than twenty percent, in the absence of the most compelling reasons, was prohibited by the Supreme Court, Chapman v. Meier, —— U.S. ——, 95 S.Ct. 751, —— L.Ed.2d —— (1975).

An added difficulty is that we could not effectively utilize the reapportionment *plans* offered by the plaintiffs and the Department of Justice in a workable manner because they simply cannot be made to conform, at this time, to the requirements of Mississippi registration and voting procedures. Moreover, to a large extent we must say in kindly candor that the objective of these plans, quite clearly, is to *maximize* black voting strength wherever it may be be found. These *plans* would fragment the eighty two counties into several hundreds of small pieces, tacked together in a fashion designed, wherever possible, to establish election districts with black majorities. All this, of course, will have to be worked out during the course of the time which will be available when we come to developing a permanent plan.

AN ANALYSIS OF POPULATION CHARACTERISTICS IN MISSISSIPPI

BLACK POPULATION MAJORITY COUNTIES ACCORDING TO THE 1970 CENSUS, INCLUDING 1960 COMPARISONS

COUNTY	WHITE 1970	BLACK 1970	BLACK MAJORITY	BLACK LOSS 1960-70	WHITE POPULATION CHANGE, 1960-70
AMITE	6,814	6.942	128	1,548	- 316
BOLIVAR	18,750	30,338	11,588	6,325	+ 1,229
CARROLL	4,615	4,771	156	1,721	- 62
CLAIBORNE	2,536	7,522	4,986	717	- 64
COAHOMA	14,232	26,013	11,781	5,427	- 398
COPIAH	12,298	12,437	139	1,621	- 694
HOLMES	7,345	15,743	8,398	3,745	- 250
HUMPHREYS	5,089	9,460	4,371	3,840	- 669
ISSAQUENA	1,033	1,698	655	701	- 143
JEFFERSON	2,296	6,996	4,700	656	+ 437
JEFFERSON DAVIS	6,435	6,497	62	911	+ 309
KEMPER	4,488	5,612	1,124	1,600	- 340
LEFLORE	17,550	24,374	6,824	5,933	+ 851
MADISON	11,148	18,548	7,400	5,082	+ 1,881
MARSHALL	9,101	14,891	5,790	2,348	+ 1,837
NOXUBEE	4,844	9,397	4,553	3,620	+ 120
PANOLA	13,061	13,753	692	2,463	+ 496
QUITMAN	6,867	9,120	2,253	4,134	- 848
SHARKEY	3,125	5,784	1,659	1,685	- 122

SUNFLOWER	13,619	23,261	9,642	7,594	- 111
TALLAHATCHIE	7,657	11,632	3,975	3,768	- 923
TUNICA	3,225	8,614	5,389	4,701	- 280
WASHINGTON	31,803	38,460	6,657	4,637	- 3,436
WILKINSON	3,588	7,499	3,911	1,929	- 219
YAZOO	12,690	14,579	1,889	4,180	- 172

From the foregoing statistics we conclude that there is no reasonable likelihood that the following counties presently have a black population majority:

County	Black Majority 1970	Black Population Loss 1960-70	White Population Change 1960-70
Amite	128	1,548	- 316
Carroll	156	1,721	- 62
Copiah	139	1,621	- 694
Jefferson Davis	62	911	+ 309
Panola	692	2,463	+ 496

In addition, between 1960 and 1970 the following counties had black population losses amounting to nearly as much, or more, than the black population majority existing in 1970:

County	Black Population Majority 1970	Black Loss 1960-70
Humphreys	4,371	3,840
Issaquena	655	701
Kemper	1,124	1,600
Quitman	2,253	4,134
Sharkey	1,659	1,685
Tallahatchie	3,975	3,768
Tunica	5,389	4,701
Yazoo	1,889	4,180

For the purpose of this opinion, however, these eight counties will be considered as black majority. The five counties named in the next preceding table no doubt have a high percentage of black population.

Between 1960 and 1970 the Counties of Clay, DeSoto, Jasper, and Tate changed from black population majorities to white.

An Analysis of the Racial Composition of the Legislative Districts of which the Black Majority Counties Are a Part

(Listed alphabetically)

HOUSE OF REPRESENTATIVES

Amite County

Black majority 128 in 1970.

Amite County is in House District 34, which has an average population of seventeen persons per square mile, hemmed in by the Louisiana boundary on the South and by the Mississippi River on the West. District 34 is constituted as follows:

County	White	Black	Total
Amite	6814	6949	13,763
Franklin	4837	3174	8,011
Wilkinson	3588	7511	11,099
	15,239	17,634	32,873

Two Representatives, 16,436 per member. Black voting age population 46.6%, although the total black population is 53.4% .

Bolivar County

District 14. Black population majority 11,588. Black voting age population 51.9%. Elects three Representatives. The Department of Justice says that this County could be divided into three single-member districts in such a fashion as to improve the chances of electing a black representative, but for lack of adequate data conforming to precinct lines this cannot now be done. The Court expects to give the division of Bolivar County further study for the permanent plan.

Carroll County

District 17. Black population majority 156. Has approximately half enough people for one Representative. May no longer be a black majority county. Strong ties with Leflore County, black population majority 6,824. Carroll is combined with that County for the election of three Representatives. The district has black voting age population of 50.1%. With appropriate data the district should be susceptible to division, reducing its three member status.

Claiborne County

District 30. Black population majority 4,986. Has a little more than half enough people for one Representative. Adjacent to the Mississippi River. Claiborne is combined with Warren County, which has 41% black population.

County	White	Black	Total
Claiborne	2,536	7,511	10,058
Warren	26,010	18,355	44,365
	28,546	25,877	54,423

Claiborne might be joined with some identifiable portion of Warren County for a single-member district. However, by order of a three-judge court in a reapportionment case, Warren County presently has no validly existing Supervisor Beats. District 30 elects three Representatives.

Coahoma County

District 11. Black population majority 11,781. Elects two Representatives and participates in the election of a Floater with Quitman and Tunica, black majority counties. The Department of Justice does not object to this district. This area presents a reasonable opportunity for division into single-member districts.

Copiah County

District 32. Black population majority 139. Has 6,564 more than enough people to elect one Representative. Joined with Jefferson County for the election of two Representatives.

County	White	Black	Total
Copiah	12,298	12,437	24,735
Jefferson	2,296	6,996	9,292
	14,594	19,433	34,027

Black majority district-wide is 4,839. Elects two Representatives, one of whom must be a resident of Copiah County. District black voting age population 50.1%.

Holmes County

District 16. Black population majority 8,398. Joined with Humphreys County, black population majority 4,371, for the election of two Representatives, one of whom is black. Department of Justice does not object.

County	White	Black	Total
Holmes	7,345	15,743	23,088
Humphreys	5,089	9,460	14,549
	12,434	25,203	37,637

Humphreys County

See Holmes County, immediately above.

Issaquena County

District 15. Has 2,737 people, one-seventh of the number required for a Representative. Black majority 655.

Joined with Washington County, which has a black majority of 6,657. Elects four Representatives. See Washington, below.

Jefferson County

See Copiah County, *supra.*

Jefferson Davis County

District 37. County had black majority of 62 as of 1970. Adjacent to no black majority county. Has 12,396 people, two-thirds enough for one Representative. Joined with white majority counties of Covington and Lawrence for the election of two Representatives. Because of the population norm cannot be joined to another county for the election of one Representative. The Department of Justice suggests that the county boundaries of Covington and Lawrence should be fractured to tailor a heavier black population.

Kemper County

District 24. Has approximately half enough people to elect one Representative. Black majority 1,124. For a discussion of the situation in which this County finds itself, see below.

Leflore County

See Carroll County, above.

Madison County

Like Marshall County, Madison County, presently in District 28, is joined with a much larger County, Rankin, but for the election of four Representatives.

County	White	Black	Total
Madison	11,148	18,548	29,696
Rankin	31,529	12,354	43,883
	42,677	30,902	73,579

Obviously, it may reasonably be argued that there is a potential for dilution in this combination. Without now finally deciding the issue of whether county lines may generally be fractured in Mississippi, a question we re-

serve for the formulation of the permanent plan, we shall order for the 1975 elections that District 28 be rearranged as follows:

District 28.	Madison County, Beats 1, 4, and 5. One Representative.
District 28A.	Madison County, Beats 2 and 3. Rankin County, Beat 2. One Representative.
District 28B.	Rankin County, Beats 1, 3, 4, and 5. Two Representatives. Posts 1 and 2.

Marshall County

District 3. Marshall County has 24,027 people. This is 5,856 more than enough to elect one Representative. The County has a black majority of 5,790. It is presently joined with much larger DeSoto, a white majority county, for the election of three Representatives at large.

	White	Black
Marshall	9,101	14,891
DeSoto	23,235	12,611
	32,336	27,502

Since Marshall County is entitled to elect one Representative, is a black majority County, and is submerged with a much larger white majority county for the election of Representatives at large, it is obvious that its power to elect one Representative from a black majority county has been diluted.

This District will be reconstituted as follows:

District 3.	DeSoto County, one Representative
District 3A.	Marshall County, one Representative
District 3B.	DeSoto and Marshall (Flotorial District) one Representative.

Noxubee County

District 23. See discussion below.

Panola County

District 9. Black majority 692 in 1970. As shown above, Panola County is now most likely a white majority county. The present legislative districting with Yalobusha, a white majority county, required that one of the Representatives be a resident of Panola County and permits the second one to be from that County also. Unlike Marshall County, Panola has not been joined with a larger county. Panola County has 26,829 people. Yalobusha has 11,915. In the first primary for the election of State and County officers in 1971, Panola County polled 8,901 votes while Yalobusha County polled 5,338. There is no real potential for invidious dilution of black voting strength in this combination of counties.

Quitman County

District 11. Black majority 2,253. See Coahoma County, above. Joins Tunica for the election of one Representative and participates in the election of a Floater.

Sharkey County

District 29. Black majority 1,659. Joined with Yazoo, black majority 1,889, for the election of two Representatives. District has 49.8% black voting age population.

Sunflower County

District 13. Black majority 9,642. Elects two Representatives. The Department of Justice does not object to this district for racial voting strength dilution.

Tallahatchie County

District 12. Black majority 3,975. Elects one Representative.

Tunica County

District 11. Population 11,839. Black majority 5,389. Combined in a black majority district for the election of one Representative with Quitman and with Coahoma and Quitman for the election of a Floater.

Washington County

District 15. Black majority 6,657. Joined with Issaquena County (population 2,737, formerly a part of Washington) for four Representatives. In the formulation of a permanent plan, with adequate data, this district should include some, if not all, single-member districts. This, however, will result in some white majority districts. The black voting age population of this district is 49.4%.

Yazoo County

District 29. Black majority 1,889. Included with Sharkey County in a black majority district. See Sharkey County, above.

Kemper and Noxubee Counties

The proper slot for the reapportionment of these Counties has given the Court much concern. After much effort, our hope of adjusting these counties has, for the time being, accomplished nothing. These are the only two black majority counties in East Mississippi. On its South side Noxubee joins Kemper. On their East sides both Counties join Alabama.

Noxubee County in 1970 had 14,288 people, of whom 9,397 were black. From 1890 to 1963 it had three Representatives, three times its share under one person-one vote. From 1963 to 1972 it had one Representative. After 1972, due to the loss of 3,620 black people and a white gain of only 120, it fell to two-thirds of one Representative. It now has only one-third of the population for a Senator. The necessity for combining it with other territory is obvious.

From 1890 to 1963, Kemper County had two Representatives. In 1967 it was combined with Neshoba County for the election of two Representatives. After it lost 1,600 black people and 340 whites between 1960 and 1970, this arrangement would no longer meet the required norms, so something else had to be done. Kemper now has a little more than half enough people to elect a Representative. The combined population of Kemper and Noxubee is:

Kemper	10,233
Noxubee	14,288

This is 13.5% above the population norm and, in relation to norms elsewhere, these Counties may not be consolidated in one district. Such a shift would also cause serious distortions elsewhere.

Noxubee County is now combined with Oktibbeha County for the election of a Senator and for the election of two Representatives. As to the election of a Representative, this is not satisfactory because Oktibbeha County has 28,752 people, twice that of Noxubee. Noxubee is 65.77% black, Oktibbeha is 65.21% white.

Kemper County is 54.84% black and is combined in a four Representative district with Lauderdale, with one of the four being required to be a resident of Kemper. The size of this district must be reduced.

The legislative district status of these two geographically isolated black counties was the subject of extended discussion in the informal court-counsel conference of July 7, 1975. The Court, of its own motion, had conducted an intensive investigation in an effort to better adjust the situation by fracturing county lines in Oktibbeha, Lowndes, and Lauderdale Counties. This proved fruitless because of impermissible distortion of population norms. All possible alternatives were discussed in the conference. No presently viable plan was suggested.

We have concluded that there are no presently viable answers to this peculiar situation, so we leave it as it is, with top priority when we come to consider the permanent plan. The only answer we now see is to take a census of the population of the voting precincts in Southern Oktibbeha, Southwestern Lowndes,and Northern Lauderdale Counties, from which the solution of the Kemper-Noxubee situation can be worked out. This can be had from the Department of Census and we have no doubt that, to resolve this presently insoluble situation, the Legislature would be willing to finance it. The Depart-

ment of Justice is hereby requested to ascertain the cost of such a census and to report to this Court.

The remaining objections raised as to *white majority areas* which conceivably could be carved up so as to encompass isolated instances of heavy black population are not well taken. This approach would be a racially motivated gerrymander. Some of these areas, however, quite obviously can be divided into single-member districts within the same county or with a minimum fracturing of county boundaries, without sacrificing the essential elements of a viable legislative district. This is a task awaiting court and counsel alike.

In resolving this reapportionment tangle, it should not be overlooked that according to the 1970 Census 67% of the white population of Mississippi are of voting age while only 53% of the blacks are eighteen years of age or older. This 14% differential in racial voting age patterns tends, of course, to distort conventional racial voting age statistics. In any event, one person-one vote reapportionment procedures count people, not just "voting age" people.

The above analysis demonstrates, however, that under the temporary plan no black majority county has been combined for the election of Representatives with a larger County containing a white population majority except in those rare instances where realities place a remedy presently out of reach.

OBJECTIONS TO THE SENATE PLAN

The population norm for a Senate District is 42,633, more than twice that of a House District. This, of course, narrows the geographical options.

District 1

	White	Black
DeSoto	23,235	12,611
Marshall	9,101	14,981
Lafayette	17,313	6,705
	49,649	34,297

Marshall County adjoins Tennessee. So does DeSoto. Lafayette is the first county south of Marshall. Marshall County has a little more than one half the people required for a Senator. Its location in this district is rationally dictated by geography.

District 6

This is a three county district, but none of the three is a black majority county.

District 8

The objections to District 8 are controlled by the considerations appearing heretofore in our discussion of the Panola-Yalobusha Representatives district.

District 9

	White	Black
Quitman	6,867	9,120
Tate	9,777	8,760
Tunica	3,225	8,614
	19,869	26,494

District 10

Coahoma	14,232	26,013

District 11

Bolivar	18,750	30,338
Sunflower	13,619	23,261
	32,369	53,599

District 12

Humphreys	5,089	9,460
Washington	31,803	38,460
	36,892	47,920

District 13

Leflore	17,550	24,374

District 14

Grenada	11,154	8,690
Tallahatchie	7,657	11,632
	18,811	20,322

District 15

Holmes	7,345	15,743
Issaquena	1,033	1,698
Madison	11,148	18,548
Sharkey	3,125	5,784
Yazoo	12,690	14,579
	35,341	56,352

This district elects two Senators. The population variations between the various counties are such that the counties cannot be divided into two districts and stay within permissible norms.

District 16

Carroll County is the only black majority county in this three county district and the majority is only 156. Carroll County has only one-fourth of the population required to elect a Senator.

Districts 18 and 19

Noxubee and Oktibbeha Counties have been discussed in connection with the House of Representatives, as have Kemper and Lauderdale Counties.

District 23

Warren County elects one Senator.

District 24

	White	Black
Claiborne	2,536	7,522
Copiah	12,298	12,437
Lincoln	26,198	18,138
Simpson	19,947	13,678
	60,979	51,775

The two black majority counties in this district, Claiborne and Copiah, have 7,000 too few people for a Senator. However, they are combined for the election of two Representatives.

District 25

	White	Black
Adams	19,366	17,927
Amite	6,814	6,949
Franklin	4,837	3,174
Jefferson	2,296	6,999
Wilkinson	3,588	7,511
	36,901	42,560

This black majority district elects two Senators. We see no racial dilution here, certainly not enough danger of it to justify altering the district within less than thirty days of the election.

Effects of the Temporary Plan, Statewide

For a general discussion of this factor see our prior opinion dated May 19, 1975. The 1970 population of Mississippi was 63.4% white and 36.9% black.

Under the temporary plan now being ordered into effect for the 1975 elections, fourteen Senators (26%) will be elected from districts having a black population majority.

Thirty Representatives (25%) will be elected from House districts having a black population majority.

In addition not less than 13 Senators and 46 Representatives will be elected from districts containing a black population ranging from 36 to 50%.

Seventy six of the 122 House members and 27 of the 52 Senate members will thus be chosen from districts having a black population of 36% or more.

Decree

In the light of the foregoing it is hereby ordered, adjudged, and decreed that members of the House of Representatives and the Senate of the State of Mississippi shall be elected in the regular quadrennial elections in the year 1975 only, as follows, to-wit:

Mississippi State Senate

District Number	County or Counties	Number of Senators
1	DeSoto, Lafayette and Marshall	2
2	Benton, Pontotoc, and Union	1
3	Alcorn and Tippah	1
4	Itawamba, Monroe, Prentiss, and Tishomingo	2
5	Lee	1
6	Chickasaw, Clay and Lowndes	2
7	Calhoun, Choctaw, Montgomery and Webster	1
8	Panola and Yalobusha	1
9	Quitman, Tate and Tunica	1
10	Coahoma	1
11	Bolivar and Sunflower	2
12	Humphreys and Washington	2
13	Leflore	1
14	Grenada and Tallahatchie	1
15	Holmes, Issaquena, Madison, Sharkey and Yazoo	2
16	Attala, Carroll and Leake	1
17	Neshoba and Winston	1
18	Noxubee and Oktibbeha	1
19	Kemper and Lauderdale	2
20	Newton and Scott	1
21	Rankin	1
22	Hinds County Supervisor District 1	1
22 A	Hinds County Supervisor District 2	1
22 B	Hinds County Supervisor District 3	1
22 C	Hinds County Supervisor District 4	1
22 D	Hinds County Supervisor District 5	1
23	Warren	1
24	Claiborne, Copiah, Lincoln and Simpson	2

25	Adams, Amite, Franklin, Jefferson and Wilkinson	2
26	Pike and Walthall	1
27	Jones	1
27 A	Covington, Jefferson Davis, Lawrence and Marion	1
27 B	Covington, Jefferson Davis, Jones, Lawrence and Marion (Flotorial District)	1
28	Clarke, Jasper and Smith	1
29	George, Greene, Perry and Wayne	1
30	Forrest, Lamar and Stone	2
31	Hancock and Pearl River	1
32	Harrison	3
33	Jackson	2

House of Representatives

District Number	County or Counties	Number of Representatives
1	Alcorn	1
1 A	Benton and Tippah	1
1 B	Alcorn, Benton and Tippah (Floater District)	1
2	Prentiss and Tishomingo Post 1 shall be filled by a resident of one county, while Post 2 shall be filled by a resident of the other county.	2
3	DeSoto	1
3 A	Marshall	1
3 B	DeSoto and Marshall (Floater District)	1
4	Lee Posts 1 and 2	2
4 A	Monroe	1
4 B	Itawamba	1
4 C	Itawamba, Lee and Monroe	1
5	Chickasaw	1
6	Pontotoc	1
7	Union	1

8	Calhoun and Lafayette	2
	Posts 1 and 2	
	Post 1 shall be filled by a resident of Lafayette County.	
9	Panola and Yalobusha	2
	Posts 1 and 2.	
	Post 1 shall be filled by a resident of Panola.	
10	Tate	1
11	Coahoma	2
	Posts 1 and 2	
11 A	Quitman and Tunica	1
11 B	Coahoma, Quitman and Tunica	1
12	Tallahatchie	1
13	Sunflower	2
	Posts 1 and 2	
14	Bolivar	3
15	Issaquena and Washington	4
16	Holmes and Humphreys	2
17	Carroll and Leflore	3
18	Grenada and Montgomery	2
19	Attala	1
20	Winston	1

21	Choctaw and Webster	1
22	Clay	1
23	Lowndes	
	Posts 1 and 2	2
23 A	Oktibbeha and Noxubee	2
	Posts 1 and 2	
	Post 1 shall be filled by a resident of Oktibbeha.	
23 B	Lowndes, Noxubee and Oktibbeha, Floater District	1
24	Kemper and Lauderdale	4
	Posts 1, 2, 3, and 4	
	Post 4 shall be filled by a resident of Kemper County.	
25	Newton	1
25 A	Clarke and Jasper	1
25 B	Newton, Clarke and Jasper (Flotorial District)	
26	Leake and Neshoba	2
	Posts 1 and 2	
	Post 1 shall be filled by a resident of Neshoba; Post 2 shall be filled by a resident of Leake.	
27	Scott and Smith	2
	Posts 1 and 2	
	Post 1 shall be filled by a resident of Scott, Post 2 shall be filled by a resident of Smith.	
28	Madison County	
	Beats 1, 4, and 5	1

28 A	Madison County, Beats 2 and 3	
	Rankin County, Beat 2	1
28 B	Rankin County, Beats 1, 3, 4, and 5	2
	Posts 1 and 2	
29	Sharkey and Yazoo	2
	Posts 1 and 2	
	Post 1 shall be filled by a resident of Yazoo.	
30	Claiborne and Warren	3
	Posts 1, 2 and 3	
	Hinds County is divided into 12 single member districts, as follows:	
31	Precincts 17, 35-38, 42-45, Twin Pines	1
31 A	Precincts 27,29,39-41,79-83,Liberty Grove	1
31 B	Precincts 1,5,6,9,14-16,32-34	1
31 C	Precincts 12,13,21-23,28,30	1
31 D	Precincts 2,4,10,11,18,19,50	1
31 E	Precincts 20,31,52,55-57,61	1
31 F	Precincts 47,51,53,58,63,64,66	1
31 G	Precincts 24-26,54,59,60,62,67-69	1
31 H	Precincts 49,70-77	1
31 I	Precincts Bolton, Brownsville, Clinton 1, Clinton 2, Clinton 3, Clinton 4, Cynthia, Flag Chapel, North Clinton, Pocahontas, Presidential Hills, Tinnin	1
31 J	Precincts Cayuga, Edwards, Fairfax, Hickory, Learned, Midway, Raymond 1, Raymond 2, Van Winkle 1, Van Winkle 2	1
31 K	Precincts Briarcliff, Byram, Chapel Hill, Dry Grove, Forest Hill, Old Byram, Red Hill, Terry, Utica 1, Utica 2, Woodville Heights	1

32	Copiah and Jefferson	2
	Posts 1 and 2	
	Post 1 shall be filled by a resident of Copiah County.	
33	Adams	
	Posts 1 and 2	2
34	Amite, Franklin and Wilkinson	2
35	Pike	1
35 A	Lincoln	1
35 B	Lincoln and Pike (Plotorial)	1
36	Simpson	1
37	Covington, Jefferson Davis and Lawrence	2
	Posts 1 and 2	
38	Marion and Walthall	2
	Posts 1 and 2	
39	Forrest and Lamar	4
	Posts 1, 2, 3, and 4	
40	Jones	
	Posts 1, 2 and 3	3
41	Wayne	1
42	Perry County	1
	Greene County, Supervisor Districts 1, 2, 3 and 5	

43	Pearl River County	1
	Stone County, Supervisor Districts 1, 2, 3 and 4	
44	Hancock County	1
45	Harrison County	1
	Supervisor District 1	
45 A	Harrison County	1
	Supervisor District 2	
45 B	Harrison County	1
	Supervisor District 3	
45 C	Harrison County	1
	Supervisor District 4	
45 D	Harrison County	
	Supervisor District 5	1
45 E	Harrison County	
	At Large, Posts 1 and 2	2
46	Jackson County	
	Supervisor District 1	1
46 A	Jackson County	1
	Supervisor District 2	
46 B	Jackson County	1
	Supervisor District 3	
46 C	Jackson County	1
	Supervisor District 4	
46 D	Jackson County	1
	Supervisor District 5	

47	George County	1
	Greene County Supervisor District 4	
	Stone County Supervisor District 5	

The June 5, 1975 deadline for the qualification of candidates to run for the State Senate and for the House of Representatives is not extended in those districts the identities of which have not been changed from that existing as of June 5. Those qualified on June 5 shall remain qualified in the district in which they still reside as of the effective date of this order.

In all newly formed House and Senate districts, candidates desiring hereafter to qualify shall do so no later than 5 p.m. CDST, Monday, July 21, 1975. The deadline for qualification of candidates for the Senate from the newly formed districts in Hinds County stands as prescribed in our order of June 25, 1975, to-wit: 5 p.m., July 7, 1975.

This opinion shall constitute our Findings of Fact and Conclusions of Law as herein set forth.

It is further ordered, adjudged and decreed that within ninety days of this date, the parties hereto shall file with the Clerk of this Court plans for the permanent reapportionment of the Legislature.

The first plan shall be for minimum practicable deviations from population norms without fracturing county boundaries. An alternative plan shall provide for minimum fracturing of county boundaries, in which no county shall be divided more than once, and no more than two fractured counties shall be placed in the same district. Any proposed fracture shall state if it is required to avoid dilution of black voting strength.

The alternate plans shall adhere as nearly as possible to precinct and beat lines. Thirdly, the parties may submit plans of their own composition consistently with their view of the law. The required plans may omit details as to representation from Kemper, Lauderdale, Lowndes, Noxubee and Oktibbeha counties, which are to be made the subject of special fact finding by the Court. All plans shall be accompanied by appropriate population data, calculations as to deviations from the norm, racial composition, etc.

Hoyt T. Holland, Jr. is hereby designated to serve hereafter as special master in this case, to serve under our orders and directions.

SO ORDERED, ADJUDGED, and DECREED, this the 11 day of July, 1975.

/s/ Jas. P. Coleman
United States Circuit Judge

/s/ Dan M. Russell, Jr.
Chief United States
District Judge

/s/ Harold Cox
United States District Judge

APPENDIX

Composition of Hinds County Districts

District	Population	% Black	% Deviation
31	18,179	0.5	+ 0.03
31A	18,427	4.9	+ 1.40
31B	17,793	6.3	— 2.09
31C	17,362	91.4	— 4.46
31D	18,483	83.8	+ 1.71
31E	18,275	49.4	+ 0.56
31F	18,722	79.0	+ 3.02
31G	17,354	9.0	— 4.51
31H	18,030	2.2	— 0.79
31I	16,184	*	—10.95
31J	16,872	*	— 7.16
31K	16,877	*	— 7.13

Districts 31 I, J, and K are outside the city of Jackson.

* No basis exists on which an accurate racial percentage can be computed for these precincts.

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI JACKSON DIVISION

Civil Action No. 3830(A)

[Filed July 21, 1975]

[Caption Omitted]

MOTION TO ALTER OR AMEND JUDGMENT

Plaintiffs, by their attorneys, respectfully move the Court pursuant to Rule 59, F.R. Civ. P., to alter or amend its Order of July 11, 1975, to

(a) Establish a date for approval by the Court of the permanent plan for reapportionment of the Mississippi Legislature referred to by the Court in its Order of July 11, 1975, at pp. 9, 14, 19, 22, 26, 44 and *passim*, designed to correct the racially discriminatory and malapportioned features of the 1975 temporary plan;

(b) Establish a specific date for special legislative elections prior to the next scheduled 1979 legislative elections to cure the defects of the 1975 temporary plan;

(c) Delete that portion of the Court's Order appointing Mr. Hoyt T. Holland, Jr., as a special master of the Court in this case; and

(d) Award plaintiffs their taxable costs, necessary expenses of the litigation and reasonable attorneys fees.

Plaintiffs respectfully request the Court to enter an order that it will render a decision on or before February 1, 1976 ordering into effect a permanent court-ordered legislative reapportionment plan for the Mississippi Legislature, and order special legislative elections in conjunction with the 1976 presidential election to cure the defects in the temporary 1975 plan.

As grounds for their motion, plaintiffs would show to the Court as follows:

A. *Dilution of Black Voting Strength.*

1. *House Plan.* The Court itself noted in its discussion of the 1975 court-ordered House districts (Order,

pp. 13-27) that there was a potential for racial dilution in some of the districts left standing by the Court, and that further study was required of House Districts 14, 17, 30, 11, 15, 23A, 23B, and 24.

There are 17 Mississippi counties which have a Black majority voting age population (BVAP). Under the 1975 court-ordered House plan, six of these counties are combined with white voting age majority counties to create district-wide white voting age population majorities, thus diluting Black voting strength:

District	No. Reps.		% Black Pop.	% Black Voting Age Pop.
30	3	Claiborne	(74.58%)	71.34%
		Warren	(40.80%)	38.15%
		Total	(47.00%)	44.29%
15	4	Issaquena	(62.00%)	54.82%
		Washington	(54.50%)	49.17%
		Total	(54.80%)	49.38%
3B	1	DeSoto	(35.14%)	30.22%
		Marshall	(61.98%)	55.91%
		Total	(45.90%)	40.51%[1]
23	5	Lowndes	(32.70%)	27.87%
		Noxubee	(65.77%)	58.51%
		Oktibbeha	(34.79%)	26.23%
		Total	(38.40%)	31.56%[2]
29	2	Sharkey	(64.7%)	56.13%
		Yazoo	(53.4%)	47.64%
		Total	(56.20%)	49.59%
34	2	Amite	(50.44%)	42.09%
		Franklin	(38.81%)	33.43%
		Wilkinson	(67.56%)	62.67%
		Total	(53.40%)	46.56%

[1] Districts 3, 3A, and 3B constitute a floterial district, in which DeSoto County has one direct representative, Marshall County has one direct representative, and Marshall and DeSoto combined elect one representative in District 3B.

[2] District 23 is floterial, but Noxubee County is combined with Oktibbeha County to form a subdistrict.

In addition, in three other House districts, Black population majority counties (1970 Census) are combined with white population majority counties to create district-wide white population majorities:

District	No. of Reps.		% Black Pop.
9	2	Panola	51.36%
		Yalobusha	40.40%
		Total	47.9%
24	4	Kemper	54.84%
		Lauderdale	30.75%
		Total	33.9%
37	2	Jefferson Davis	50.22%
		Covington	32.60%
		Lawrence	32.14%
		Total	38.5%

In the 1975 House plan, the Court created single-member districts in two counties in which plantiffs objected to at-large, countywide voting, Hinds and Madison, and single-member subdistricts in a floterial district in a third county, Harrison. At-large, countywide voting in the House districts created by the 1975 plan submerges substantial concentrations of Black population sufficiently large to be entitled to independent representation in single-member districts in seven additional counties. Black voting strength is diluted and cancelled out by countywide white voting majorities in Washington (see District 15, above), Bolivar, Coahoma, Leflore, Sunflower, Lauderdale, and Warren Counties.

In Lauderdale and Warren Counties, House Districts 24 and 30, Blacks have sufficient population to be entitled to separate representation in majority Black single-member districts, but these substantial Black population concentrations are cancelled out in the white countywide population majorities:

House District	County	White Pop.	% White	Black Pop.	% Black	Total Pop.
24	Lauderdale	46,186	68.84%	20,630	30.75%	67,087
30	Warren	26,474	58.85%	18,355	40.81%	44,981

According to 1975 projections of racial voting age population based on 1970 Census data (Ex. P-13), Blacks are only 47.34% of the voting age population in District 17, Carroll and Leflore Counties.

Further, Blacks do not have effective countywide voting majorities in House Districts 11 (Coahoma County), 13 (Sunflower County), or 14 (Bolivar County). The optimum Black vote in each of these districts (Barber testimony, Exs. P-30, P-31) is as follows:

District	No. of Reps.	County	Optimum Black Vote
11	2	Coahoma	49.3%
13	2	Sunflower	45.6%
14	3	Bolivar	44.0%

2. *Senate Plan.* Under the 1975 court-ordered Senate plan, eight counties which have Black majority voting age population are combined with white voting age population majority counties to create district-wide white voting age population majorities, thus diluting Black voting strength:

District	No. of Senators		% Black Pop.	% Black Voting Age Pop.
1	2	DeSoto	(35.14%)	30.21%
		Lafayette	(27.73%)	20.63%
		Marshall	(61.98%)	55.91%
		Total	(40.68%)	33.97%
9	1	Quitman	(57.40%)	50.16%
		Tate	(47.24%)	38.23%
		Tunica	(72.67%)	65.99%
		Total	(57.24%)	49.01%
14	1	Grenada	(43.77%)	37.43%
		Tallahatchie	(60.15%)	51.87%
		Total	(51.85%)	44.19%
18	1	Noxubee	(65.77%)	58.51%
		Oktibbeha	(34.79%)	26.23%
		Total	(45.08%)	36.03%

District	No. of Senators		% Black Pop.	% Black Voting Age Pop.
24	2	Claiborne	(74.58%)	71.34%
		Copiah	(50.25%)	43.41%
		Lincoln	(30.67%)	25.81%
		Simpson	(31.37%)	27.15%
		Total	(42.30%)	37.13%
25	2	Adams	(47.90%)	44.05%
		Amite	(50.44%)	42.09%
		Franklin	(38.81%)	33.43%
		Jefferson	(75.26%)	69.26%
		Wilkinson	(67.56%)	62.67%
		Total	(53.37%)	47.91%

In addition, in four other Senate districts, Black population majority counties are combined with white population majority counties to create district-wide population majorities:

District	No. of Senators		% Black Pop.
8	1	Panola	51.26%
		Yalobusha	40.40%
		Total	47.9%
16	1	Carroll	50.77%
		Attala	40.38%
		Leake	35.65%
		Total	40.7%
19	2	Kemper	54.84%
		Lauderdale	30.75%
		Total	33.9%
27	3	Jefferson Davis	50.22%
		Covington	32.60%
		Lawrence	32.14%
		Jones	24.50%
		Marion	31.05%
		Total	30.3%

3. *Alternatives.* The extent to which the 1975 court-ordered plan dilutes and cancels out Black voting strength

may be shown in comparison with the other alternative plans proposed by plaintiffs and plaintiff-intervenor. In a State which is 36.9% Black, in the 1975 court-ordered House plan there are only 14 out of 84 House districts which are majority Black in voting age population (see Exhibit A, attached), and only 5 out of 39 Senate districts which are majority Black in voting age population (see Exhibit B, attached). Each of the single-member districting plans proposed by plaintiffs and plaintiff-intervenor provides more districts which are majority Black in voting age population,[5] not to maximize Black voting strength or create "safe" Black majority seats, but to cure the dilution of Black voting strength present in multi-member districts and countywide voting:

	Black Majority VAP House Districts	Black Majority VAP Senate Districts
1975 Court Plan	14	5
Valinsky Plan	23	7
Kirksey Plan	26	7
State Modified Plan (Dept. Just.)	29	11

B. *Malapportionment.*

4. In the House plan, the variances from population equality range from +38.694% (District 4A, Monroe County and its share of the floater representative) to —24.269% (District 25, Newton County, and its share of the floater representative), for a total deviation from population equality in the House plan of 62.963% (see Exhibt C, attached). In the Senate plan, the variances from population equality range from +9.584% (District 29, George, Greene, Perry, and Wayne Counties) to —10.708% (District 27, Jones County, and its share of

[5] Statistics for the Valinsky and Kirksey Plans calculated by the Department of Justice and contained in their pleading, Statistical Analysis of Plaintiffs' Exhibits 19 & 20 (Valinsky Plan) and Plaintiffs' Exhibit 33 & 34 (Kirksey Plan), filed July 3, 1975. Statistics for the State Modified Plan also calculated by the Department of Justice, and contained in their pleading, Analysis of House Bill 1290 and Senate Bill 2976 by the United States.

the floater senator), for a total deviation from population equality in the Senate plan of 20.202% (see Exhibit D, attached).

In the House plan, 11 of the 84 districts vary from population equality by more than 10% plus or minus. These are:

District 1A	—12.090%
District [illegible]	+23.508%
District 4A	+38.694%
District 4B	—21.000%
District 11	—14.160%
District 25	—24.269%
District 31I	—10.95%
District 35	+12.900%
District 42	—12.547%
District 45D	+32.662%
District 47	—13.114%

Thirty-three of the 84 districts vary from population equality by more than 5% plus or minus.

In the Senate plan, 19 of the 39 districts vary from population equality by more than 5% plus or minus.

5. There are literally hundreds of alternatives which the Court might have chosen which would have provided greater equality of population among the districts without breaking county lines. The 1973 Report of the Interim Study Committee provided districts with smaller deviations in the House of 14.7% and in the Senate of 12.8%. The computer analysis of Dr. Gordon G. Henderson, although incomplete in terms of providing single-member districts to offset dilutions of Black voting strength, nevertheless demonstrated that it is possible without breaking any county lines to provide legislative districts with deviations from population equality of 10.62% in the House and 10.51% in the Senate. The Court could have chosen either one of these feasible alternatives, or any other alternative providing greater equality of population, as a basis for drawing new districts and making adjustments to cure dilution of Black voting strength, instead of the unconstitutional 1971 court-ordered plan which provides districts which are seriously malapportioned.

6. In addition, plaintiffs and plaintiff-intervenor presented to the Court three legislative redistricting plans providing single-member districts statewide which provide greater equality of population among the districts than the plan ordered into effect by the Court:

	House Deviation	Senate Deviation
1975 Court Plan	62.963%	20.202%
Valinsky Plan	5.39%	3.39%
Kirksey Plan	5.75%	5.01%
State Modified Plan (Dept. of Just.)	8.96%	19.68%

C. *Multi-Member Districts.*

7. Under the Supreme Court's ruling in this case and *Chapman* v. *Meier*, —— U.S. ——, 42 L.Ed.2d 766 (1975), single-member districts are preferred to multi-member districts in a court-ordered legislative reapportionment plan. The 1975 court-ordered plan contains an excessively large number of multi-member and multi-member floterial districts, and therefore violates *Chapman* principles. The multi-member districts (including floterial districts) in the House plan, and the number of representatives per district, are:

District(s)	No. of Reps.
1, 1A, 1B, (flot.)	3
2	2
3, 3A, 3B, (flot.)	3
4, 4A, 4B, 4C (flot.)	5
8	2
9	2
11, 11A, 11B (flot.)	4
13	2
14	3
15	4
16	2
17	3
18	2
23, 23A, 23B (flot.)	5
24	4
25, 25A, 25B (flot.)	3

District(s)	No. of Reps.
26	2
27	2
28B	2
29	2
30	3
32	2
33	2
34	2
35, 35A, 35B (flot.)	3
37	2
38	2
39	4
40	3
43	2
45-45E (flot.)	7

Thus, 51 of the 84 districts created by the 1975 court order, electing 89 representatives out of 122, or 72.95% of the entire membership of the Mississippi House of Representatives, are multi-member districts.

The multi-member districts (including floterial districts) in the Senate plan, and the number of senators per district, are:

District(s)	No. of Senators
1	2
4	2
6	2
11	2
12	2
15	2
19	2
24	2
25	2
27, 27A, 27B (flot.)	3
30	2
32	3
33	2

Thus, 15 of the 39 senatorial districts are multi-member districts, electing 28 of the 52 senators, or 53.85% of the entire membership of the Mississippi Senate.

D. *Special Eelections*

8. As indicated above, the Mississippi legislative districts as established by this Court's Order of July 11, 1975, dilute Black voting strength and are excessively malapportioned in violation of the constitutional rights of plaintiffs, the plaintiff class, and Mississippi voters generally. As a result of these constitutional violations, plaintiffs and their class will suffer immediate irreparable injury by the use of these districts for the 1975 state legislative elections. Unless the relief requested is granted, plaintiffs and the Mississippi electorate generally will be forced to suffer unconstitutional interim legislative districts for another four years until the 1979 legislative elections. If these unconstitutional districts are permitted to stand for another four years, no one can have confidence in the democratic or judicial processes for obtaining redress of grievances. A specific and firm date for the ordering into effect of a permanent plan must be set by the Court, and special legislative elections must be required. The court-ordered plan ordered in 1971 was considered by the Supreme Court on appeal to be only an interim, temporary plan for the 1971 legislative elections only. Now the Court has ordered into effect for the 1975 legislative election the same plan, with changes in House districts only for Marshall, Hinds, Harrison, Jackson, Stone, and Perry Counties, and changes in Senate districts only for Hinds County. Under these circumstances, plaintiffs cannot wait until 1979 for the denial of their constitutional rights to be vindicated.

9. The United States Supreme Court frequently has ordered special elections as a remedy for racial discrimination in voting and for unconstitutional malapportionment. *Hadnott* v. *Amos*, 394 U.S. 358 (1969); *Toombs* v. *Fortson*, 241 F. Supp. 65, 71 (N.D. Ga. 1965) (three-judge court), *aff'd*, 384 U.S. 210 (1966); *Drum* v. *Seawell*, 249 F. Supp. 877, 881-82 (M.D. N.C. 1965) (three-judge court), aff'd 383 U.S. 831 (1966); *Mann* v. *Davis*, 238 F. Supp. 458 (E.D. Va. 1964) (three-judge court), aff'd sub nom. *Hughes* v. *WMCA*, 379 U.S. 694 (1965); *Moss* v. *Burkhart*, 220 F. Supp. 149 (W.D. Okla. 1963) (three-judge court), aff'd sub nom. *Williams* v. *Moss*, 378 U.S. 558 (1964).

Similarly, the United States Court of Appeals for the Fifth Circuit frequently has invoked the remedy for shortening the terms of office of officials elected under an unlawful election scheme, and provided for a special election once the legal defect has been removed. *Keller* v. *Gilliam*, 454 F.2d 55 (5th Cir. 1972); *Hall* v. *Issaquena County Bd. of Supervisors*, 453 F.2d 404 (5th Cir. 1971) (Order of July 29, 1971); *Howard* v. *Adams County Bd. of Supervisors*, 453 F.2d 455 (5th Cir. 1972) (Order of July 29, 1971); *Smith* v. *Paris*, 386 F.2d 979 (5th Cir. 1967); *Hamer* v. *Campbell*, 358 F.2d 215 (5th Cir. 1966). This remedy is in accord with the rulings of the Mississippi Supreme Court. As the Fifth Circuit has observed,

> "The Mississippi courts have also not been averse to the requiring of a new election when defects have necessitated the invalidating of the regularly scheduled election. See Ulmer v. Currie, 245 Miss. 285, 147 So.2d 286; Wallace v. Leggett, 248 Miss. 121, 158 So.2d 746; and Hayes v. Abney, 186 Miss. 208, 188 So. 533." *Taylor* v. *Monroe County Bd. of Supervisors*, 421 F.2d 1038, 1042 (5th Cir. 1970).

E. *Appointment of the Special Master.*

10. Plaintiffs object to the appointment of Mr. Hoyt T. Holland, Jr., as special master for the Court on grounds of (a) past inaccuracies in the calculation of population data in redistricting plans, and (b) the extensive prior history of Mr. Holland and his firm, Comprehensive Planners, Inc., in racial gerrymandering of the boundary lines of county supervisors' districts.

We have recalculated the population data submitted by Mr. Holland to the Court for his Hinds County single-member districting plan, using the block statistics provided by the U. S. Bureau of the Census. Computer cards were punched for each of the blocks within the City of Jackson using U. S. Census data, and these block cards were organized according to the new precincts and new House districts proposed by Mr. Holland. This check

on the calculations performed by Mr. Holland suggests the following discrepancies in the data as calculated by Mr. Holland:

	HOLLAND			COMPUTER		
District	Total Pop.	% Deviation	% Black	Total Pop.	% Dev.	% Black
1 (31)	18,179	+0.03	0.5	18,135	— .19	0.38
2 (31A)	18,427	+1.40	4.9	19,091	+5.06	33.6
3 (31B)	17,793	—2.09	6.3	18,057	— .62	6.4
4 (31C)	17,362	—4.46	91.4	16,613	—8.61	90.4
5 (31D)	18,483	+1.71	83.8	18,124	— .26	83.86
6 (31E)	18,275	+0.56	49.4	16,518	—9.13	46.16
7 (31F)	18,722	+3.02	79.0	19,058	+4.88	76.1
8 (31G)	17,354	—4.51	9.0	17,480	—3.80	5.89
9 (31H)	18,030	—0.79	2.2	18,036	— .74	.8

The data from the computer run suggest that the true deviation from population equality in the Hinds County House districts is 16.01%.

Further, the total of the population of the 12 districts devised by Mr. Holland is 2,415 less than the total population of Hinds County.

Mr. Holland and his firm were employed by the boards of supervisors to provide county redistricting plans for, among others, Hinds, Warren, Yazoo, Leake, and Grenada Counties; and in each of those cases one or more Section 5 objections were lodged by the United States Attorney General on the grounds either that the population calculations were inadequate to determine whether Black voting strength was diluted or that the redistricting plan drawn by Mr. Holland and/or C.P.I. diluted Black voting strength (Ex. P-9, Pottinger dep., and deposition exhibits). The plaintiffs, and we suggest, the Court cannot have confidence in a special master or planning firm with such an extensive record of racial gerrymandering of supervisors' districts in Mississippi.

WHEREFORE, plaintiffs pray that their motion be granted.

Respectfully submitted,

/s/ Frank R. Parker
FRANK R. PARKER
HERMAN WILSON
Lawyers' Committee for Civil Rights Under Law
233 North Farish Street
Jackson, Mississippi 39201

JOHN L. MAXEY, II
Pyles, Cupit & Maxey
507 East Pearl Street
Jackson, Mississippi 39201

Attorneys for Plaintiffs

[Certificate of Service Omitted]

[Exhibits Omitted]

IN THE
UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

[Filed July 24, 1975]

Civil Action No. 3830(A)

[Caption Omitted]

MOTION OF THE UNITED STATES FOR AMENDMENT OF JUDGMENT

The United States moves the Court, pursuant to Ruie 59, F.R. Civ.P., for an amendment of its judgment, incorporated in its order of July 11, 1975, to establish a schedule for the adoption of a permanent plan of reapportionment of the Mississippi legislature and for the holding of special elections pursuant thereto.

As reasons therefor the United States states as follows:

The temporary plan ordered by the Court does not meet constitutional standards.

When elections are conducted in violation of constitutional and statutory protections of the right to vote, those elections should be set aside and new elections held.

Absent some relief, legislators will, for the second time, be elected under a plan which the Court itself considers less than satisfactory.

There is ample precedent for aborting the terms of officers elected under an interim plan or one not meeting constitutional requirements and ordering permanent relief according to a court imposed schedule after an acceptable plan is perfected.

GERALD W. JONES
Attorney
Department of Justice
Washington, D.C. 20530

ROBERT E. HAUBERG
United States Attorney

BY: /s/ L. K. Travis
L. K. TRAVIS
Assistant United States Attorney

[Certificate of Service Omitted]

IN THE
UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

Civil Action No. 3830(A)

[Filed Aug. 1, 1975]

PEGGY J. CONNOR, ET AL., PLAINTIFFS

—*vs*—

WILLIAM L. WALLER, ET AL., DEFENDANTS

AND

UNITED STATES OF AMERICA, PLAINTIFF-INTERVENOR

Before COLEMAN, Circuit Judge, RUSSELL, Chief District Judge, and COX, District Judge.

ORDER

By this order the Court rules on the motion filed by the plaintiffs in this cause on July 21, and filed by the United States of America on July 24.

Plaintiffs move that the Court set a deadline of February 1, 1976, for the completion of a permanent plan for the reapportionment of the Mississippi Legislature. The Court expects to have such a plan approved before February 1, 1976. Understanding, however, the vagaries of litigation and not being able to foresee the future as to complications now unexpected but which might arise, the Court declines to set a deadline upon its own efforts. The Court reiterates its firm determination to have this matter out of the way before February 1, 1976.

Plaintiffs move the Court now to establish a specific date for special legislative elections, preferably in the general elections of 1976. As to all instances in which

a special election may be required, the Court expects to direct that the same shall be held in conjunction with the 1976 Presidential election so as to save the expense of special elections, as far as possible.

Plaintiffs move that that portion of the Court's order appointing Hoyt T. Holland, Jr. as special master be deleted. The Court expects to formulate its own permanent plan and the duties of Mr. Hoyt T. Holland specifically will be only to assist in that regard. It is correct that he made some errors in the data furnished for the temporary plan, but under the excruciatingly short time available the Court made some also, of a mathematical and stenographical nature.

The matter of costs and attorneys fees will be decided in the final judgment establishing the permanent plan and after the Court has had an opportunity to hear evidence and argument on the features of the case.

This disposition of the plaintiffs motion likewise disposes of the motion filed on behalf of the United States.

SO ORDERED, this the 1st day of August, 1975.

/s/ Jas. P. Coleman
JAS. P. COLEMAN
United States Circuit Judge

/s/ Dan M. Russell, Jr.
DAN M. RUSSELL, JR.
Chief United States District Judge

/s/ Harold Cox
HAROLD COX
United States District Judge

IN THE
UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

Civil Action No. 3830(A)

[Filed Aug. 1, 1975]

PEGGY J. CONNOR, ET AL., PLAINTIFFS

—*vs*—

WILLIAM L. WALLER, ET AL., DEFENDANTS

AND

UNITED STATES OF AMERICA, PLAINTIFF-INTERVENOR

Before COLEMAN, Circuit Judge, RUSSELL, Chief District Judge, and COX, District Judge.

ORDER

It has come to the attention of the Court, via regular news media, that the United States Census Bureau has compiled and released its official estimates of the population of the State of Mississippi and its various subdivisions as of the year 1973. Said official estimates show that between 1970 and 1973 the population of the States of Mississippi increased from 2,216,994 to 2,317,022. It further shows, for example, that the population of DeSoto County between 1970 and 1973 increased from 35,885 to 46,241, while the population of Jackson County increased from 87,975 to 103,933. The population of Rankin County increased from 43,933, to 51,864. On the other hand, there were decreases in other Counties.

These being the latest and the most accurate figures available as to population in Mississippi at this time (although they are now two years out of date) it is

ORDERED that the population figures released by the United States Bureau of Census giving its population estimates as of 1973 shall be used as the basis of and for the establishment of a permanent plan of reapportionment of the Mississippi Legislature, as heretofore ordered by the Court, and which is to be completed as soon as possible hereafter, hopefully before February 1, 1976. The parties in compiling the various plans to be submitted to the Court will be governed accordingly.

ORDERED, this the 1st day of August, 1975.

/s/ Jas. P. Coleman
JAS. P. COLEMAN
United States Circuit Judge

/s/ Dan M. Russell, Jr.
DAN M. RUSSELL, JR.
Chief United States District Judge

/s/ Harold Cox
HAROLD COX
United States District Judge

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Supreme Court, U. S.
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APPENDIX
VOLUME III

IN THE
Supreme Court of the United States
OCTOBER TERM, 1976

Nos. 76-777, 76-933, 76-934, 76-935

PEGGY J. CONNOR, ET AL.,
Appellants
—*v.*—
CLIFF FINCH, GOVERNOR OF THE STATE OF MISSISSIPPI, ET AL.

CLIFF FINCH, GOVERNOR OF THE STATE OF MISSISSIPPI, ET AL.,
Appellants
—*v.*—
PEGGY J. CONNOR, ET AL. AND UNITED STATES OF AMERICA

UNITED STATES OF AMERICA,
Appellant
—*v.*—
CLIFF FINCH, GOVERNOR OF THE STATE OF MISSISSIPPI, ET AL.

PEGGY J. CONNOR, ET AL.,
Appellants
—*v.*—
CLIFF FINCH, GOVERNOR OF THE STATE OF MISSISSIPPI, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

DOCKETED DECEMBER 8, 1976, AND JANUARY 5, 1977
PROBABLE JURISDICTION NOTED DECEMBER 8, 1976 AND JANUARY 17, 1977.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

Nos. 76-777, 76-933, 76-934, 76-935

PEGGY J. CONNOR, ET AL.,

Appellants

—*v.*—

CLIFF FINCH, GOVERNOR OF THE STATE OF MISSISSIPPI, ET AL.

CLIFF FINCH, GOVERNOR OF THE STATE OF MISSISSIPPI, ET AL.,

Appellants

—*v.*—

PEGGY J. CONNOR, ET AL. AND UNITED STATES OF AMERICA

UNITED STATES OF AMERICA,

Appellant

—*v.*—

CLIFF FINCH, GOVERNOR OF THE STATE OF MISSISSIPPI, ET AL.

PEGGY J. CONNOR, ET AL.,

Appellants

—*v.*—

CLIFF FINCH, GOVERNOR OF THE STATE OF MISSISSIPPI, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

TABLE OF CONTENTS

	Page
Docket Entries	I-1
Complaint (October 19, 1965)	I-37
Plaintiffs' Exhibit 19 (May 17, 1971) (excerpt)	I-47

	Page
Transcript of Proceedings (February 7, 1975) (excerpts)	I-51
Judgment (April 11, 1975)	I-52
Amended Complaint for Injunctive and Other Equitable Relief (April 15, 1975) (exhibits omitted)	I-54
Transcript of Proceedings (May 7, 1975) (excerpts)	I-70
Plaintiffs' Exhibits (May 7, 1975)	I-71
P-6 Deposition of Harold E. Sweeney, Jr. (exhibits omitted)	I-71
P-7 Deposition of Dr. James W. Loewen (exhibits omitted)	I-117
P-8 Deposition of Dr. Gordon G. Henderson (exhibits omitted)	I-155
P-9 Interrogatories of Honorable J. Stanley Pottinger (exhibits omitted)	I-200
P-10 Deposition of Rims Barber (exhibits omitted)	I-221
P-17 Transcript of February 7, 1975 Testimony of Dr. David Valinsky (exhibits omitted)	I-281
P-19 Valinsky Plan for Mississippi House of Representatives	I-325
P-20 Valinsky Plan for Mississippi State Senate	I-346
P-25 Deposition of Henry J. Kirksey (exhibits omitted)	I-360
P-32 Kirksey Plan for Mississippi Senate (map omitted)	I-410
P-33 Kirksey Plan for Mississippi House of Representatives (map omitted)	I-419
Transcript of Proceedings (May 7, 1975)	
Witnesses:	
Dr. Gordon G. Henderson (exhibits omitted)	II-1
Mr. Rims Barber (exhibits omitted)	II-81
Henry J. Kirksey (exhibits omitted)	II-114
Order Allowing United States to Intervene as Party-Plaintiff (June 11, 1975)	II-128
Complaint in Intervention of United States (June 11, 1975)	II-129
Analysis of House Bill 1290 and Senate Bill 2976 by United States (June 20, 1975)	II-135
Transcript of Proceedings (June 20, 1975) (excerpts)	II-177
Order Pursuant to Remand by the Supreme Court of the United States (June 25, 1975)	II-178

	Page
Order Establishing Certain Temporary Districts for the Election of Senators and Representatives in the Mississippi Legislature for the Year 1975 Only (July 8, 1975)	II-183
Order Establishing Certain Temporary Districts for the Election of Senators and Representatives in the Mississippi Legislature for the Year 1975 Only (July 11, 1975)	II-207
Plaintiffs' Motion to Alter or Amend Judgment (July 21, 1975) (exhibits omitted)	II-239
Motion of United States for Amendment of Judgment (July 24, 1975)	II-252
Order on Motions Filed by Plaintiffs and Plaintiff-Intervenor to Alter or Amend (August 1, 1975)	II-254
Order Regarding Use of U. S. Census Bureau Population Statistics (August 1, 1975)	II-256
Alternative Plans Submitted by the United States Pursuant to Order of July 11, 1975 (October 31, 1975) (map exhibits omitted)	III-1
Request for Hearing Date by United States (January 26, 1976)	III-78
Order Deferring Further Hearing and Decision (January 29, 1976)	III-79
Preliminary Observations of Judge Coleman (June 15, 1976)	III-81
Transcript of Proceedings (June 15, 1976) (excerpts)	III-89
Plaintiffs' Motion for a Prompt and Immediate Decision on a Final Court-Ordered Legislative Reapportionment Plan and Special Elections (August 2, 1976)	III-91
Order Regarding Reapportionment of Mississippi State Senate (August 24, 1976)	III-94
Order Regarding Reapportionment of Mississippi State House of Representatives (September 8, 1976)	III-117
Plaintiffs' Motion for Special Election Relief (September 8, 1976)	III-139
Proposal by United States for Special Elections (September 16, 1976)	III-142
Plaintiffs' Motion for Special Elections (House Plan) (September 16, 1976)	III-146
Plaintiffs' Motion to Alter and Amend Judgment and Plaintiffs' Objections to 1976 Court-Ordered Legislative Reapportionment Plan (September 20, 1976) (exhibits omitted)	III-160

Page

Proposal by United States for Special Elections (September 28, 1976) III-169

Letter dated September 28, 1976 from William D. Neal to Honorable J. P. Coleman, Judge III-174

Memorandum from Special Master re House of Representatives (October 7, 1976) III-177

Plaintiffs' Supplement to Motion to Alter or Amend Judgment (October 8, 1976) III-182

Letter dated October 19, 1976 from Frank R. Parker to Honorable J. P. Coleman, et al. III-197

Objections of the United States to Plans for the Redistricting of the Mississippi Senate and House of Representatives Contained in the Court Orders of August 24 and September 8, 1976 (October 22, 1976) III-206

Order Amending the Reapportionment of the House of Representatives (November 12, 1976) III-220

Final Judgment (November 18, 1976) III-232

Plaintiffs' Notice of Appeal (November 18, 1976) III-249

Plaintiffs' Motion to Alter or Amend Judgment (November 29, 1976) III-250

Order by the U. S. Supreme Court Noting Probable Jurisdiction (December 8, 1976) III-259

Letter dated December 17, 1976, from Honorable James P. Coleman to the Clerk, U. S. District Court, attaching Special Master's Report dated December 8, 1976 ..... III-260

Order Amending Previous Judgment (December 21, 1976) III-279

Plaintiffs' Notice of Appeal (December 27, 1976) III-283

United States' Notice of Appeal (December 28, 1976) III-284

Orders noting probable jurisdiction III-285

IN THE
UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

Civil Action No. 3830(A)

[Filed Oct. 31, 1975]

[Caption Omitted]

ALTERNATIVE PLANS SUBMITTED BY THE UNITED STATES PURSUANT TO ORDER OF JULY 11, 1975

By Order entered July 11, 1975, the Court directed the parties to this litigation to submit plans apportioning the Mississippi state legislative districts on the basis of various criteria outlined by the Court. The Court's initial directive commanded the parties to submit plans apportioning the House of Representatives and the Senate of the State of Mississippi without splitting county boundaries and equalizing population between the districts to the extent possible. Attached as Exhibits A and B are the attempts by the United States to accomplish the Court's directive in this respect and, at the same time, avoid to the extent possible diluting the voting strength of minorities.

I. COUNTY BOUNDARY PLANS

As required by the Court, the population statistics used to construct these plans were Current Population Reports: Population Estimates and Projections, "*1973 Population and 1972 Per Capita Income Estimates for Counties and Incorporated Places in Mississippi,*" Series P-25, No. 569, U.S. Bureau of Census (June, 1975). Those statistics provide only a total population and do

not provide racial composition. Attached as Exhibit E is a chart setting forth, for each majority black county, the total population change from 1960-1970, the total population change from 1970-1973, and the total black population change from 1960-1970. As is evident from that publication, there are no trends which, on the basis of the statistics available, would provide a basis for projecting the black population by county for 1973. Accordingly, we calculated the racial composition of each county by using the black population percentage from the 1970 census information and multiplying it by the total 1973 county population.

In submitting these plans according to the directive of this Court which here gives complete deference to county boundaries, we wish to emphasize two points. First, as we have previously stated,[1] plans such as these fail to meet constitutional requirements for an apportionment of the legislature for the State of Mississippi, particularly when, as here, they are being formulated by the Court itself. Such plans inevitably necessitate the creation of multi-member districts in order to reasonably meet the requirements of one-man one-vote. The use of multi-member districts in Mississippi where there is a cognizable black population results in dilution of black voting strength. See footnote 1.

Secondly, such a plan results in disportionate population deviations when, as we believe is required in such circumstances, efforts are made to avoid racial dilution. There is an inverse proportional relationship between the size, population-wise, of the smallest unit to construct districts and the flexibility or number of alternative combinations. It is axiomatic that when restrictions on the units available to build districts preclude alternatives which would permit giving credence to minority voting

[1] *Amicus Curiae* Brief of United States to the United States Supreme Court; Memorandum of United States, submitted June 18, 1975, discussing cases cited by Supreme Court upon remand to this Court; Analysis of H.B. 1290 and S.B. 2976, submitted June 20, 1975; Memorandum of United States, further delineating our analysis of H.B. 1290 and S.B. 2976.

strength, any such plan devised on the basis of those units results in diluting minority voting strength.

Under such restrictions, cognizance cannot be given to concentrations of black population which either transcend county boundaries[2] or which are located entirely within a county the population of which exceeds the norm for a single district but which is not evenly divisible by the norm for one district, *e.g.*, Washington County for both the House and Senate and Warren County for the House.

A. *Senate County Boundary Plan*

The County Boundary Plan for the Senate contains 38 districts, 12 of which are multi-member districts. Thirteen of the districts including 3 multi-member districts have majority black population. Eight of those thirteen districts, including one multi-member district, have a majority black VAP. The following Chart 1 is a comparison of the County Boundary Plan with the State Modified Plan:

Chart 1

	# of Districts with maj BVAP	# Reps. Elected
State Modified	11	12
BVAP more than 54%	10	11
BVAP less than 54%	1	1
County Boundary	8	9
BVAP more than 54%	4	4
BVAP less than 54%	4	5

A comparison of these figures demonstrates that the number of majority black VAP districts is reduced by adhering to county boundaries and the resulting majority

[2] For instance, District 46 of the State Modified Plan (hereinafter SMP), previously presented to the Court by the United States as a possible redistricting alternative in these proceedings, gives credence to a concentrated black population area in portions of Clay, Oktibbeha, Lowndes, Monroe, and Chickasaw Counties and has a black VAP majority of 54.36%.

black VAP districts have generally a lower black majority.

Chart 2

Chart 2 below sets forth how each black majority VAP county is treated in this proposed plan:

I. Combined with white population majority counties resulting majority white population districts:

District	# of Reps.	Counties	% B. Pop.	% BVAP
10	1	Tallahatchie	60.2	52.03
		Yalobusha	40.4	33.04
		Calhoun	26.1	19.95
			43.72	—
25	2	Madison	62.3	56.74
		Leake	35.7	31.29
		Scott	33.0	29.23
		Neshoba	19.7	17.17
			40.42	—

II. Combined with majority white population counties resulting in majority white VAP districts:

2	1	Marshall	62.0	56.74
		Tate	47.2	38.26
			55.61	48.09
15	1	Noxubee	65.8	58.62
		Kemper	54.8	46.77
		Winston	39.1	33.33
			51.36	43.71
31	1	Wilkinson	67.6	62.78
		Adams	47.9	44.12
			52.26	48.03

III. Combined with majority white VAP counties resulting in majority white VAP districts:

District	# of Reps.	Counties	% B. Pop.	% BVAP
7	1	Quitman	57.4	50.39
		Panola	51.3	44.06
			53.47	46.03
18	2	Issaquena	62.0	55.07
		Sharkey	64.7	56.37
		Washington	54.5	49.43
			55.79	49.88

IV. Combined with majority white population counties or majority white VAP counties resulting in majority black VAP districts:

16	1	Holmes	68.1	60.70
		Attala	40.4	33.90
			54.93	52.74
17	1	Humphreys	64.8	57.70
		Yazoo	53.4	47.70
			57.36	50.84
30	1	Claiborne	74.6	71.54
		Copiah	50.3	43.43
		Jefferson	75.3	69.29
			60.70	54.61

V. Combined with majority black VAP counties resulting in majority black VAP districts:

8	1	Coahoma	89.0	58.50
		Tunica	72.7	66.07
			85.34	81.50
9	2	Bolivar	61.4	53.26
		Sunflower	62.8	55.06
			62.00	53.66

VI. Left as a single county district:

11	1	Leflore	57.9	51.56

An analysis of these various groupings in the submitted county boundary plan for the state senate shows the following:

Group I

Two combinations other than these were easily possible for Tallahatchie and Madison.[3] In both instances majority black population districts would have been created, but both districts would have had majority white VAP.

In the State Modified Plan Tallahatchie County was split and placed in two districts—Districts 7 and 8. District 7 has a black majority VAP of 56.91% and District 8 a black population percentage of 46.25%. Madison County was placed in District 37 which has a black VAP majority of 55.38%.

Group II

Although other combinations were possible for Marshall County, none would have resulted in a majority black population district. No other feasible combinations were available for Noxubee. The result under the County Boundary Plan does not significantly differ from the State Modified Plan.

Wilkinson County could have been combined with Amite, Franklin and Jefferson to create a majority black population district. Such a district would have been majority white VAP and would have resulted in submerging the black voting strength of not only Wilkinson County but also Jefferson and Claiborne in majority white VAP districts. Under the State Modified Plan, all three counties were in districts with a majority black VAP.[4]

[3] Tallahatchie could have been combined with Grenada and Carroll resulting in an approximately 50% black population district. Madison could have been combined with Sharkey, Issaquena, Yazoo and Leake resulting in a 55% black population majority district. Such a district would have extended across two-thirds of the width of Mississippi and elected 2 members.

[4] District 22 with a BVAP of 58.73% and District 27 with a BVAP of 55.46%.

Group III

Quitman County could have been combined with Coahoma County to create a majority black VAP district. However, such a combination would have left Tunica County isolated with no feasible combinations.

Issaquena and Sharkey Counties could have been combined with Madison and other counties,[5] however, the resulting district would have majority white VAP. Under the State Modified Plan, Issaquena and Sharkey were in District 39 with a 54.1% BVAP and Quitman was in District 7 with a 56.91% BVAP.

B. *House County Boundary Plan*

The House plan contains 67 districts, 31 of which are multi-member districts.[6] Twenty districts, 8 of which are multi-member, have a majority black population and 18 districts, 7 of which are multi-member, have majority black VAP.

Chart 3 is a comparison of the County Boundary Plan with the State Modified Plan:

Chart 3

	# of Districts with maj. BVAP	# Reps. Elected	Multi-Member Dist.
State Modified			
BVAP more than 56%	18	18	—
54-56%	6	6	—
52-54%	1	1	—
50-52%	4	4	—
	29	29	
County Boundary			
BVAP more than 56%	8	9	1
54-56%	3	5	1
52-54%	2	4	1
50-52%	5	8	3
	18	26	6[7]

[5] See discussion *supra* at p. 7.

[6] Including the only floterial district.

[7] Does not include floterial district.

Two items of significance can be seen by this chart. First, adhering to county boundaries results in a substantially lower number of majority black VAP districts. Second, the districts with a majority black VAP generally have a much lower percentage majority. According to the testimony of Rims Barber in this case, black voting strength in Mississippi is not significantly effective in a district with less than 54% BVAP.

The number of representatives elected by the proposed BVAP districts in the County Boundary Plan is also less than in the State Modified Plan. The fact that 26 representatives would be elected from majority black VAP districts in the former must be considered in the context of the number of multi-member districts contributing to that total. There are 6 such districts from which 14 of the 26 members would be elected. In our view, as we have previously stated to the Court, multi-member districts in the State of Mississippi generally dilute black voting strength.

Chart 4

I. Combined with majority white population counties resulting in majority white districts:

District	# of Reps.	Counties	% B. Pop.	% BVAP
1	3	Tunica	72.7	66.00
		DeSoto	35.1	30.25
			42.0	—
24	3	Issaquena	62.0	55.07
		Sharkey	64.7	56.37
		Warren	40.8	38.27
			45.3	—

II. Combined with white majority VAP counties resulting in white VAP majority districts:

20	2	Noxubee	65.8	58.62
		Winston	39.1	33.33
		Kemper	54.8	46.77
			51.36	43.71

III. Combined with majority white population counties or majority white VAP counties resulting in majority black VAP districts:

District	# of Reps.	Counties	% B. Pop.	% BVAP
3	2	Marshall	62.0	56.70
		Benton	42.0	32.32
			57.7	50.60
22	3	Madison	62.3	56.74
		Yazoo	53.4	47.70
			58.3	52.45
25	2	Claiborne	74.6	71.54
		Copiah	50.3	43.43
			57.1	51.30
46	2	Wilkinson	67.6	62.78
		Jefferson	75.3	69.29
		Franklin	38.8	33.46
		Amite	50.4	42.12
			58.1	51.20
11 (Floterial)	6	Bolivar	61.4	53.26
		Washington	54.5	49.43
			57.3	50.56

IV. Combined with majority black VAP resulting in majority black VAP districts:

10	3	Quitman	57.4	50.39
		Coahoma	64.3	58.50
			62.4	55.74
23	2	Holmes	68.1	60.70
		Humphreys	64.8	57.70
			66.8	59.37

V. Left as a single county district:

12A	1	Sunflower (part)	62.1	54.00
12B	1	Sunflower (part)	63.7	55.73
13A	1	Leflore (part)	73.5	68.19
14	1	Tallahatchie	60.2	51.82

Group I

A combination of DeSoto County with Tunica County dilutes the black voting strength in Tunica County by combining it with a majority white population county to elect three members. The only other possible combination for Tunica would have been with Panola County, which, like DeSoto County has a majority white voting age population. The resulting effect on the black voting strength in Tunica County would be dilutive.

The policy of adhering to county boundaries prevents the creation of a black VAP majority district such as that created in the State Modified Plan.[8]

A combination of Warren County with the black majority VAP counties of Issaquena and Sharkey dilutes the black voting strength in those latter two counties.

Majority black VAP counties Issaquena and Sharkey could have been combined in two other ways. First, with Washington County in a district in which four members would be elected. Second, with Yazoo County in a district in which two people would be elected. Both Washington and Yazoo Counties have a majority black population, but a majority white VAP. The resulting effect in both instances would have been to submerge the black voting strength in Issaquena and Sharkey Counties, as well as the substantial black concentrations in Washington and Yazoo Counties, in multi-member districts with a white majority VAP.

As is demonstrated by District 44 of the State Modified Plan, cognizance can be given to the black voting strength in Issaquena and Sharkey Counties and portions of surrounding counties if the drafting of a plan is not restricted by adhering to county boundaries.

Group II

A combination of Winston County with Noxubee and Kemper Counties dilutes black voting strength. The only other possible combination for these counties would have been combining them with Oktibbeha County, which also has a majority white population. Such a district

[8] District 13 which has a 63.15% BVAP.

would have had three representatives, as compared to two in the presently proposed district, and likewise would have resulted in a white majority VAP district.

It should be noted that western Lowndes County, eastern Oktibbeha County and eastern Clay County have significant black population concentrations.

Again, the restriction of adhering to county boundaries prevents the creation of compact, single-member districts with black majority VAP's.

Districts 49 and 50 of the State Modified Plan contain Kemper and Noxubee Counties resulting in two majority black population districts, one of which, District 49, has a majority black VAP of 54.03%.

Group III

Each of the districts listed in the group are multi-member districts. District 22 has the highest majority black VAP of the four districts, i.e., 52.45%. In each instance, the necessary use of a multi-member district, in an effort to comply with one-man one-vote requirements, results in the dilution of black voting strength.

With the exception of combining Claiborne and Jefferson Counties in a single-member district, no combination of counties would have avoided this result, considering one-man one-vote requirements.[9]

Both Madison and Marshall Counties have a sufficient population to create a district with a majority black VAP in them, however, neither is evenly divisible by the norm for one district, so as to allow subdivision of the county.[10]

Bolivar County has sufficient population to create two districts within it, plus ⅔ of a third district. In light of the black population concentration in surrounding

[9] Madison County could have been combined with Holmes County to elect three members. Such a district would have had a majority black VAP. However, Holmes County was combined with Humphreys County, accomplishing the same result. Both counties could not have been combined with other counties in such a way to avoid diluting black voting strength.

[10] See Districts 6, 58 and 59 of the State Modified Plan.

counties, at least two of the three districts would have had a majority black VAP.[11]

Although Washington County has a majority white VAP, it has 38,000 blacks which in itself is sufficient to create two substantial black majority districts. Districts 36 and 41 of the State Modified Plan demonstrate the available alternatives when county boundaries are not adhered to.

In an effort to avoid the effects of a district in which 6 members are elected by the combination of Washington and Bolivar Counties, this district was established as a floterial district. For this purpose, Bolivar County was subdivided into 2 parts, and Washington County into 3 parts. Each subdistrict elects one member and participates in the election of the sixth member. However, the result is to cause substantial deviation from one-man one-vote.

Groups IV and V

The remaining majority black VAP counties are either combined in such a way, or established as single-member districts, so as to avoid dilution of black voting strength.

* * * *

The restriction of adhering to county boundaries operates in two other situations to prevent effectively avoiding the dilution of black voting strength.

A number of counties have sufficient total population and black population to allow the creation of single-member districts with a black majority VAP. For instance, such a district could be created in Vicksburg (Warren County), Natchez (Adams County), portions of Copiah County, portions of Panola County, and portions of Coahoma County.[12] None of these counties has a population which is equally divisible by the norm for one district within acceptable deviation limits.

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[11] See Districts 31, 32 and 36 of the State Modified Plan.

[12] See Districts 11, 14, 55, 81 and 100 of the State Modified Plan.

The second situation occurs where there exists a concentrated black population in adjoining areas of several counties, but where each individual county has a majority white population, or voting age population. State Modified Plan Districts 24 and 39 illustrate this point.

CONCLUSION

For the foregoing reasons, we believe that implementation of either Senate or House County Boundary Plans would not be in compliance with requirements of the Fifteenth Amendment of the United States Constitution.

II. RESTRICTED FRACTIONALIZATION PLANS

In its Order of July 11, 1975, the Court also directed the parties to submit a plan, as an alternative to a plan which adhered to county boundaries, which:

> . . . shall provide for the minimum fracturing of county boundaries, in which no county shall be divided more than once, and no more than two fractured counties shall be placed in the same district. . . . The alternate plans shall adhere as nearly as possible to precinct and beat lines.

Attached as Exhibits C and D are the United States' attempts to meet these Court criteria. The Senate Restricted Fractionalization Plan is hereinafter SRFP and the House Restricted Fractionalization Plan is hereinafter HRFP.

Several points also should specifically be noted regarding the contents of these plans. First, it was not possible to utilize 1973 Census statistics to draw these plans. Those statistics provide only an estimate of population by county and each incorporated place. No racial composition figures are available and no statistics are provided for supervisor districts, voting precincts, or enumeration districts (from which calculations of the population and racial composition could fairly accurately be made). Other than 1970 Census statistics, we do not

have any other statistics which would have provided the necessary information and we are not aware that any such statistics exist for 1973. Accordingly, we used 1970 Census statistical data in formulating these plans.

Second, not all counties in Mississippi were able to provide maps or legal descriptions of voting precincts. To date we have, either from our internal records, by visiting the county, or by mail, obtained precinct maps from 45 of the 82 counties.[13] Nevertheless, we have been able to conform both SRFP and HRFP to existing supervisor district or voting precinct lines, except for Warren County in HRFP.[14]

Third, population statistics generally are not available by voting precinct. Accordingly, when only a portion of a county was used in creating a district, calculations from enumeration districts were made to determine the population and racial composition of the relevant portions of each county.[15] Inevitably those calculations contain some margin of error. Where available, house count information available to us from the files of the submissions of reapportionments pursuant to Section 5 of the Voting Rights Act of 1965 was also utilized.[16]

Finally, because of the Attorney General's special responsibility under the Voting Rights Act to assure that voting rights are not denied or abridged on the basis of race or color, we have given particular attention in draft-

[13] A list of the 37 counties for which we have not been able to obtain voting precinct information is attached as Exhibit F. Officials in 10 of those counties have indicated that the information will be provided by mail. Those counties are so designed on Exhibit F.

[14] Existing voting precincts were not considered in Warren County since that county has been directed by a three-judge panel of this Court to take the steps necessary to accomplish a valid reapportionment no later than March 1, 1976. Such a reapportionment will very likely necessitate alterations in existing precincts.

[15] Block statistics, which enable these calculations to be made on a block by block basis were used where available, *i.e.*, City of Jackson, Meridian, Gulfport-Biloxi.

[16] The house count figures generally relied on estimate per household and most were taken before publication of the 1970 Census. As a result, they do not exactly correspond to the Census figures.

ing these plans, to the protection of minority voting rights. However, the incorporation in these plans of a substantial number of multi-member districts which do not necessarily involve racial dilution in our view renders these plans suspect in a court-formulated redistricting. See footnote 1, *supra*.

A. *Senate Plan*

At the outset, SRFP has five multi-member districts, four of which have two representatives and one of which (Harrison County), has three. As a matter of comparison, the State Modified Plan (hereinafter SMP), previously presented to the Court by the United States as a possible alternative in these proceedings, contains four multi-member districts, three of which have two members and one of which (Harrison County) has three.

SRFP has 15 districts with a black population majority (electing 15 members) and 12 districts with a black VAP majority (electing 12 members). In comparison, SMP has 15 districts[17] with a black population majority (electing 16 members) and 12 districts with a black VAP majority (electing 13 members).

The following Chart 5 is a comparison of the black VAP in SMP and SRFP:

[17] As originally submitted SMP contained only one black majority VAP district in Hinds County giving a total of 14 districts with a black majority population. That alignment does not adhere to voting precincts and, accordingly, different districts were drawn. An examination of those districts indicates that two black majority districts are created. Such a plan further avoids submergence of the substantial black population in districts with a greater number of whites. Accordingly, our suggested State Modified Plan is by this reference amended to include the new proposed Hinds County districts.

Chart 5

	# of districts with maj. BVAP	# of Rep.
State Modified	12	13
BVAP 56% or more	5	5
BVAP 54-56%	6	7
BVAP 52-54%	1	1
BVAP 50-52%	0	0
Senate Restricted		
Fractionalization	12	12
BVAP 56% or more	6	6
BVAP 54-56%	2	2
BVAP 52-54%	1	1
BVAP 50-52%	3	3

Thus it is evident that SRFP results in three less districts with a BVAP of more than 54% than SMP and the evidence in this case stands uncontradicted that black voting strength is not substantially effective in a district with less than 54% BVAP.[18]

In addition, SRFP adds little in terms of effectuating any policy of adhering to county boundaries. SMP left intact 59 counties whereas SRFP leaves intact 62 counties. Only 6 districts in SMP do not comply with the Court's restriction on including no more than portions of two split counties in one district.[19] Two of these districts, 7 and 46, have a majority black VAP. Adhering to the Court's directive of placing no more than two partial counties in one district thus results in a decrease by two of the number of districts in which blacks would have a meaningful opportunity for electing a candidate of their choice.

In its order establishing the guidelines for this plan, the Court directed the parties to specify in each instance a county boundary is transcended in a district whether it was necessary to do so to avoid racial dilution. In SRFP 20 counties are divided between districts

[18] Testimony of Rims Barber.

[19] Districts 5, 7, 8, 15, 24 and 46.

at least one of which contains part of another county.[20] Except as indicated in the analysis below, in each instance the division was made to avoid diluting black voting strength or the resulting combination of a portion of one county with other counties, or portions thereof, was necessary because another portion of that county was combined with other counties, or a portion thereof, to avoid dilution of black voting strength.

Each district which contains a portion of a county combined with another county or portion thereof is discussed below.

1. *Districts 1, 11, 20 and 21.*

Districts 11 and 21 are the key districts in this group. District 21 gives cognizance to the black voting strength in Noxubee, Kemper and western Lowndes Counties and has a 67% BVAP. District 11, although not a majority black population district, seeks to avoid dilution of the substantial black voting strength in Clay County, southeastern Monroe County and northwestern Oktibbeha County. Neither the remaining portions of Lowndes, Monroe or Oktibbeha have sufficient population for a district; therefore, Districts 1 and 20 contain portions of those counties combined with other counties to avoid deviation problems.

2. *Districts 2, 3, 4 and 5.*

The creation of District 4 which gives cognizance to black voting strength in Tate, Marshall and Benton Counties occasions the combinations of portions of a county in Districts 2, 3 and 5 to limit deviation problems.

3. *District 6.*

District 6 adds part of Bolivar County, which has 4500 too many people to constitute the norm for one district, to Coahoma County which has 6000 too few.

[20] Monroe, Lowndes, Alcorn, Benton, Tate, Bolivar, Tallahatchie, Oktibbeha, Sunflower, Scott, Lauderdale, Newton, Yazoo, Washington, Wayne, Jones, Jefferson Davis, Copiah, Pike and Adams.

Creating single-member districts here avoids a geographically large two-member district and results in two majority BVAP districts.

4. *Districts 7 and 8.*

Tallahatchie County was divided in order to avoid diluting black voting strength in Quitman, Tunica, Tallahatchie and western Panola Counties, the result being a BVAP in District 7. Yalobusha County, which has a substantial white population majority, was added to avoid impermissible population deviation in residual District 8. A two-member district would have resulted in that district having a white VAP majority.

5. *Districts 15, 18, 25 and 26.*

All four of these districts have a majority black VAP. Washington County, portions of which are in Districts 15 and 26, has a majority white VAP and a concentrated white population in portions of Greenville and surrounding areas. Adhering to county boundaries would have resulted in dilution of black voting strength of any county combined with Washington County in its entirety.

Yazoo County was divided between Districts 25 and 26 to avoid the immense size a two-member district encompassing five counties which would have resulted.

6. *Districts 19, 22, 23 and 24.*

None of these districts have a majority black population. The affected counties in this group were divided among the four districts primarily to avoid the creation of a large four-member district.

7. *Districts 35, 36, 37, 38 and 43.*

The key district in this group is District 38 which combines Claiborne, Jefferson and portions of Copiah to create a majority BVAP district necessitating the splitting of Copiah County. The remaining counties that are split were divided to avoid creating a large four-member district which would have extended almost the entire width of the State of Mississippi.

8. *Districts 39, 40 and 41.*

District 40 has a black population majority whose voting strength would be diluted significantly if included in a multi-member district. Thus, Adams County was divided to create single-member District 40. District 39 (2 members) and District 41 (1 member) were created in lieu of a three-member district simply because the latter would have contained more than five counties and would have contained more than five counties and would have spanned two-thirds the width of Mississippi.

B. *House Plan*

HRFP has seven multi-member districts, five of which have two representatives and two of which have three representatives. No other plan for apportioning the House of Representatives, except the County Boundary Plan submitted herewith, contains multi-member districts.

HRFP has 29 districts with a black population majority (electing 30 members) and 27 districts with a black VAP majority (electing 28 members). In comparison the SMP has 34 districts with a black population majority (electing 34 members) and 29 districts with a black VAP majority (electing 29 members).

The following Chart is a comparison of the black VAP in SMP and HRFP:

	# of Districts with Maj. BVAP	# of Reps.
State Modified	29	29
BVAP 56% or more	17	17
BVAP 54-56%	7	7
BVAP 52-54%	1	1
BVAP 50-52%	4	4
House Restricted		
Fractionalization	27	28
BVAP 56% or more	22	23
BVAP 54-56%	2	2
BVAP 52-54%	1	1
BVAP 50-52%	2	2

It is evident from this Chart that SMP has two more majority BVAP districts electing one more member. However, it is also evident that both plans contain 24 districts with a BVAP of 54% or more.[21] Both BVAP majority districts which are not contained in HRFP have a BVAP of 50-52%.

Additionally, the restrictions which the Court imposed on the drafting of HRFP had the effect of increasing the number of counties which were not split from 20 in the SMP to 30.[22] Keeping intact 8 of the 10 additional counties that were not split was a concomitant result of using multi-member districts.[23]

More significantly, the restrictions imposed by the Court resulted in greater geographical irregularity in the districts in order to avoid deviation problems. Notwithstanding our efforts to limit deviations from the norm, HRFP contains 14 districts with more than ±5% deviation, and a total deviation range of 15.86%. In comparison, SMP has no districts with more than ±5% deviation and has a total deviation range of 8.82%. This increase in deviation results as much from the requirement of adhering to existing voting precincts and supervisor districts as from the requirement of not placing more than two partial counties in one district.[24]

In its order of July 11, 1975, the Court directed that the parties specify in each instance that a county boundary is transcended whether it was necessary in order to avoid dilution. Except as noted below, each such division

[21] The percentage which Rims Barber testified is significant in evaluating the effectiveness of black voting strength in Mississippi. His testimony has not been contradicted.

[22] Those 30 counties are: Alcorn, Tishomingo, Benton, Tunica, Tate, Union, Pontotoc, Prentiss, Itawamba, Carroll, Webster, Clay, Kemper, Winston, Attala, Sharkey, Leake, Neshoba, Jefferson, Jasper, Clarke, Jefferson Davis, Lincoln, Wilkinson, Walthall, Perry, George, Hancock, Pearl River and Stone.

[23] Those 8 counties are: Alcorn, Union, Pontotoc, Prentiss, Neshoba, Lincoln, Pearl River and Stone.

[24] SMP contains only 15 districts which place more than two partial counties in one district. Five of those districts (24, 36, 44, 49 and 51) have a majority black VAP.

was made either to avoid diluting black voting strength or as a concomitant result of the combination of a portion of one county with another county, or portions thereof, to avoid dilution of black voting strength.

Districts 6 and 18.

Both districts are majority black and could have been combined to result in a majority black district. That combination would not have significantly altered the percentage of black population of either district but would have required the creation of a three member district which included only part of Tallahatchie County. See footnote 1, *supra* at p. 3 and accompanying text.

Districts 8, 9, 15, 16, and 17.

These districts could have been combined without diluting black voting strength but would have resulted in a five member district snaking halfway across the state. Only part of Lee County and part of Panola County would have been used in that combined district. The remainder of Lee is in Districts 11 and 13 and inclusion of it in the combined district would have resulted in a six member district with the same geographical irregularity.

Including the remaining part of Panola would have had a dilutive effect.[25]

Districts 14, 30, 31 and 32.

A combination of these districts again would have created a large (four member) district and included only part of a county, *i.e.*, Lowndes. The remainder of Lowndes is in District 33, a majority black VAP district.

Districts 51 and 56.

District 51 is a three-member district which involves splitting Scott County. To avoid this split would require a four member district which would include only part of Newton County.

[25] See Exhibit D-1, District 6.

Districts 57, 75, 76, 77 and 78.

To avoid splitting any county lines for the counties in this group would require a five member district encompassing a large geographical area extending approximately one-half the width of Mississippi.

Districts 79, 80 and 99.

A three member district would have been required to avoid splitting any county boundaries, and would have reduced the black percentage of approximately 35% in Districts 79 and 80 to 27%. District 99 has only a 12.03% black population.

Districts 86, 90 and 91.

A combination of these districts would not avoid splitting county lines entirely. District 86, which is a two member district, contains only a part of Franklin County and District 90 contains only part of Amite. The remaining portions of those two counties are in District 89 which has a substantial black VAP which would be diluted if combined in a multi-member district.

A district combining proposed Districts 89, 90 and 91 and leaving Franklin County and Amite split would elect 4 members.

Districts 92 and 93.

A two member district combining these districts would include only a part of Lawrence County. The remaining part of Lawrence County is in District 85 and contains part of Copiah. The remainder of Copiah is in a majority black VAP district.

CONCLUSION

The requirement imposed by this Court of adhering to county boundaries renders it impossible to structure a plan which avoids diluting the voting strength of blacks. Accordingly, in our opinion, neither the proposed Senate nor House County Boundary Plans meet Fifteenth Amendment requirements. Accordingly, they are not acceptable alternatives to the three plans now before this Court for apportioning the State of Mississippi, *i.e.*, Kirksey Plan, the Valinsky Plan and the State Modified Plan.

Likewise, the SRFP does not reasonably avoid diluting black voting strength for the reasons set forth in discussion of that plan. Thus, it is not an acceptable alternative to the three plans now before this Court and, accordingly, we advocate adoption of the Kirksey, Valinsky or State Modified Plan [26] for approaching the Senate.

HRFP, despite having a greater deviation due to the restrictions imposed by the Court, appears to meet appropriate Fifteenth Amendment requirements and, accordingly is an acceptable alternative, as well as the Kirksey Plan, the Valinsky Plan and the State Modified Plan.

Respectfully submitted,

/s/ Michael D. Johnson
MICHAEL D. JOHNSON
GERALD W. JONES
Attorneys
Department of Justice
Washington, D.C. 20530

[26] As modified for Hinds County. See footnote 17 at p. 21.

EXHIBIT A-1

Senate: County Boundary Plan

I. Total population 2,317,022 1/

Number of seats 52

Ideal population per seat 44,558

II. Deviations

Districts with more than ±5% deviation 12 2/

Greatest minus (-) deviation -8.88% 3/

Greatest plus (+) deviation +12.10% 4/

Total deviation range 20.98%

III. Description

District	No. of Reps.	County(ies)	Total Pop. 1/	Est. '73 5/ Black Pop.	Est. % Black	Est. % BVAP	% Dev.
1	1	DeSoto	46,241	16,249	35.14		+3.77
2	1	Marshall	26,770	16,597	62.0		
		Tate	20,328	9,595	47.2		
			47, 098	26,192	55.61	48.09	+5.70
3	1	Benton	7,411	3,112	42.0		
		Tippah	17,256	2,813	16.3		
		Union	20,379	3,138	15.4		
			45,046	9,063	20.11		+1.09
4	1	Tishomingo	15,876	1,856	11.7		
		Alcorn	28,197	3,327	11.8		
			44,073	5,183	11.76		-1.09
5	2	Itawamba	17,783	996	5.6		
		Lee	48,874	10,117	20.7		
		Prentiss	20,699	2,422	11.7		
			87,356	13,535	15.49		-1.97
6	1	Lafayette	26,859	7,440	27.7		
		Pontotoc	18,337	3,264	17.8		
			45,196	10,704	23.68		+1.48
7	1	Panola	27,460	14,087	51.3		
		Quitman	15,187	8,717	57.4		
			42,647	22,804	53.47	46.03	-4.29
8	1	Tunica	11,214	8,153	72.7		
		Coahoma	38,764	24,926	64.3		
			49,979	33,078	66.18	59.72	+12.1
9	2	Bolivar	49,472	30,376	61.4		
		Sunflower	36,801	23,111	62.8		
			86,273	53,487	62.00	53.66	-3.19
10	1	Tallahatchie	18,607	11,201	60.2		
		Yalobusha	12,395	5,008	40.4		
		Calhoun	15,662	3,931	26.1		
			46,064	20,140	43.72		+3.38
11	1	Leflore	41,472	24,012	57.9	51.56	-6.93
12	1	Grenada	20,054	8,784	43.8		
		Carroll	9,361	4,755	50.8		
		Montgomery	13,242	5,932	44.8		
			42,657	19,471	45.65		-4.27
13	2	Webster	10,137	2,271	22.4		
		Choctaw	8,496	2,379	28.0		
		Oktibbeha	30,726	10,692	34.8		
		Clay	19,136	9,453	49.4		
		Chickasaw	17,206	6,125	35.6		
			85,701	30,920	36.07		-3.83
14	2	Lowndes	53,483	17,490	32.7		
		Monroe	34,811	10,617	30.5		
			88,294	28,107	31.83		-0.92

1/ From 1973 Population and 1972 Per Capital Income Estimates for Counties and Incorporated Places in Mississippi, U. S. Department of Commerce, Series P-25, No. 569, Issued June, 1975.

2/ Districts 2, 8, 11, 16, 17, 18, 27, 31, 32, 34, 36, and 38.

3/ District 17.

4/ District 8.

5/ Computed by multiplying 1970 black population % for county by total 1973 population.

District	No. of Reps.	County(ies)	Total Pop. 1/	Est. '73 5/ Black Pop.	Est. % Black	Est. % BVAP	% Dev.
15	1	Winston	18,982	7,422	39.1		
		Noxubee	13,700	9,015	65.8		
		Kemper	10,170	5,573	54.8		
			42,852	22,010	51.36	43.71	-3.83
16	1	Attala	19,630	7,822	40.4		
		Holmes	22,498	15,321	68.1		
			42,128	23,143	54.93	52.74	-5.45
17	1	Humphreys	14,109	9,143	64.8		
		Yazoo	26,491	14,147	53.4		
			40,600	23,290	57.36	50.84	-8.88
18	2	Washington	71,158	38,781	54.5		
		Sharkey	8,605	5,567	64.7		
		Issaquena	2,403	1,490	62.0		
			82,166	45,838	55.79	49.88	-7.80
19	1	Warren	46,070	18,797	40.8		+3.39
20	1	Hinds: precincts Twin Pines, Liberty Grove 1, 5, 8, 9, 14-17, 32-38, 42-45, 79-82	43,877	2,231	5.28		-1.5
21	1	Hinds: precincts 11-13, 21-31, 39-41, 83	44,895	27,150	60.47	57.15	+0.75
22	1	Hinds: precincts 2, 4, 6, 10, 18-20, 47, 50-58, 63, 64	46,351	30,928	66.7	63.61	+4.02
23 (Alternative 1)	1	Hinds: precincts 49, 66-77, Byram, Old Byram Red Hill, Terry, Dry Grove, Chapel Hill, Forrest Hill, Woodville Heights, Hickory, Fairfax, Briarcliff	43,341	---	---		-2.73

District	No. of Reps.	County(ies)	Total Pop. 1/	Est. '73 5/ Black Pop.	Est. % Black	Est. % BVAP	% Dev.
23 (Alternative 2)	1	Hinds: precincts 49, 66-77, 59-62, Byram, Old Byram, Dry Grove, Terry, Chapel Hill, Red Hill	45,201	---	---		+1.44
24 (Alternative 1)	1	Hinds: precincts Tinnin, Pocahontas, Cynthia, Presidential Hills, North Clinton, Clinton 1, 2, 3, 4, Van Winkle I & II, Midway, Flag Chapel, Brownsville, Bolton, Edwards, Cayuga, Utica 1 and 2, Learned, Raymond 1 and 2, 59-62	43,667	---	---		-1.99
24 (Alternative 2)	1	Hinds: precincts Tinnin, Pocahontas, Cynthia, Presidential Hills, North Clinton, Clinton 1-4, Van Winkle I & II, Midway, Flag Chapel, Brownsville, Bolton, Edwards, Cayuga, Utica 1 and 2, Learned, Raymond 1 and 2, Fairfax, Hickory, Woodville Heights, Briarcliff, Forest Hill	41,807	---	---		-6.17
25	2	Madison	31,904	19,876	62.3		
		Leake	17,484	6,242	35.7		
		Scott	22,292	7,356	33.0		
		Neshoba	21,681	4,271	19.7		
			93,361	37,745	40.42		+4.46
26	2	Newton	19,476	5,317	27.3		
		Lauderdale	71,325	21,968	30.8		
			90,801	27,285	30.04		+1.89

District	No. of Reps.	County(ies)	Total Pop. 1/	Est. '73 5/ Black Pop.	Est. % Black	Est. % BVAP	% Dev.
27	1	Clarke	15,413	5,533	35.9		
		Wayne	16,965	5,581	32.9		
		Greene	8,507	1,872	22.0		
			40,885	12,986	31.77		-8.24
28	2	Jasper	16,116	7,478	46.4		
		Jones	59,021	14,460	24.5		
		Covington	14,380	4,688	32.6		
			89,515	26,626	29.74		+0.45
29	2	Rankin	51,864	14,574	28.1		
		Simpson	20,800	6,531	31.4		
		Smith	14,404	2,218	15.4		
			87,608	23,323	26.62		-2.30
30	1	Claiborne	10,113	7,544	74.6		
		Copiah	25,880	13,018	50.3		
		Jefferson	8,806	6,631	75.3		
			44,799	27,193	60.70	54.61	+0.54
31	1	Adams	37,639	18,029	47.9		
		Wilkinson	10,708	7,239	67.6		
			48,347	25,268	52.26	48.03	+8.50
32	1	Amite	13,106	6,605	50.4		
		Franklin	7,989	3,100	38.8		
		Lincoln	26,902	8,259	30.7		
			47,997	17,964	37.43		+7.72
33	1	Pike	33,291	14,482	43.5		
		Walthall	12,406	5,049	40.7		
			45,697	19,531	42.74		+2.56
34	1	Lawrence	11,421	3,673	32.2		
		Jefferson Davis	12,922	6,487	50.2		
		Marion	23,504	7,310	31.1		
			47,847	17,475	36.52		+7.38
35	2	Forrest	61,839	15,151	24.5		
		Lamar	16,925	2,234	13.2		
		Perry	9,370	2,464	26.3		
			88,134	19,849	22.52		-1.10
36	3	Jackson	103,933	16,837	16.2		
		Stone	8,541	1,964	23.0		
		George	13,217	1,533	11.6		
			125,691	20,334	16.17		-5.97

District	No. of Reps.	County(ies)	Total Pop. 1/	Est. '73 5/ Black Pop.	Est. % Black	Est. % BVAP	% Dev.
37	1	Pearl River	27,772	5,082	18.3		
		Hancock	18,351	2,606	14.2		
			46,123	7,688	16.66		+3.51
38	3	Harrison	145,738	24,630	16.90		+9.02

EXHIBIT A-2

Population Projections Per District
For Hinds County 1/

	1970 Pop.	1973 Pop.	Percent Change
Hinds County	214,973	223,105	+3.8%

Senate Districts

	1970 Pop.	1970 B. Pop.	1973 Pop.	1973 B. Pop.	% B.
20	42,271	2,150	43,877	2,231	5.28
21	43,252	26,157	44,895	27,150	60.47
22	44,655	29,796	46,351	30,928	66.70
23 (Alt. 1)	41,755	N/A	43,341	N/A	N/A
23 (Alt. 2)	43,547	N/A	45,201	N/A	N/A
24 (Alt. 1)	42,069	N/A	43,667	N/A	N/A
24 (Alt. 2)	40,277	N/A	41,807	N/A	N/A

1/ Since 1973 population information is available only on a county wide basis, it was assumed that the increase in the county's population was evenly dispersed throughout the districts within the county.

BEST COPY AVAILABLE

EXHIBIT A-3

Senate County Boundary Plan: VAP Computations

Dist.	County(ies)	WVAP 1/	BVAP 2/	TVAP	% BVAP
2	Marshall	6,658	8,446		
	Tate	7,382	4,561		
		14,040	13,007	27,047	48.09
7	Panola	9,019	7,100		
	Quitman	4,189	4,166		
		13,208	11,266	24,474	46.03
8	Tunica	2,031	3,937		
	Coahoma	9,129	12,608		
		11,160	16,545	27,705	59.72
9	Bolivar	13,209	14,796		
(2)	Sunflower	9,517	11,523		
		22,726	26,319	49,045	53.66
11	Leflore	11,784	12,541	24,325	51.56
15	Winston	8,042	3,969		
	Noxubee	3,218	4,521		
	Kemper	3,421	2,914		
		14,681	11,404	26,085	43.71
16	Attala	8,358	4,162		
	Holmes	5,199	7,982		
		13,557	12,144	25,701	52.74
17	Humphreys	3,322	4,470		
	Yazoo	8,163	7,410		
		11,485	11,880	23,365	50.84
18	Washington	20,537	19,747		
(2)	Sharkey	2,034	2,589		
	Issaquena	603	734		
		23,174	23,070	46,244	49.88
21	Hinds	12,050	16,075	28,125	57.15

1/ 1970 WVAP divided by 1970 total population times 1973 white population.

2/ 1970 BVAP divided by 1970 total population times 1973 black population.

		WVAP 1/	BVAP 2/	TVAP	% BVAP
22	Hinds	10,473	18,312	28,785	63.61
30	Claiborne	1,809	4,504		
	Copiah	9,086	6,974		
	Jefferson	1,547	3,493		
		12,442	14,971	27,413	54.61
31	Adams	12,682	9,948		
	Wilkinson	2,335	3,932		
		15,017	13,880	28,897	48.03

EXHIBIT B-1

HOUSE OF REPRESENTATIVES: COUNTY BOUNDARY PLAN

I. Total population 2,317,022 1/

Number of seats 122

Ideal population per seat 18,992

II. Deviations

Districts with more than ±5% deviation 34 2/

Greatest minus (-) deviation -13.92 3/

Greatest plus (+) deviation +13.45 4/

Total deviation range 27.32%

III. Description

District	Member	Counties	Total 1/ Pop.	Est. '73 5/ Black Pop.	Est. % Black	Est. % BVAP	% Dev.
1	3	DeSoto	46,241	16,231	35.1		
		Tunica	11,854	8,153	72.7		
			58,095	24,384	42.0		+1.96
2	1	Tate	20,328	9,595	47.20		+6.56
3	2	Marshall	26,770	16,597	62.0		
		Benton	7,411	3,113	42.0		
			34,181	19,710	57.7	50.6	-10.01
4	3	Tippah	17, 25	2,813	16.3		
		Alcorn	28,197	3,327	11.8		
		Tishomingo	15,876	699	4.4		+7.64
			61,329	6,839	11.2		
5	2	Prentiss	20,699	2,422	11.7		
		Itawamba	17,783	996	5.6		
			38,482	3,418	8.9		+1.30
6	4	Lee	48,874	10,117	20.7		
		Union	20,379	3,138	15.4		
			69,273	13,255	19.1		-8.80

1/ From 1973 Population and 1972 Per Capita Income Estimates for Counties and Incorporated Places in Mississippi, U. S. Department of Commerce, Series P-25, No. 569, Issued June, 1975.

2/ Districts 2, 3, 4, 6, 11A, 11B, 11C, 11D, 12B, 13A, 13B, 15, 16, 18, 19, 20, 25, 35, 40, 41, 45, 46, 49A, 49B, 51C, 51E, 51F, 51G, 52A, 52B, 52C, 52D, 52E.

3/ District 51C.

4/ District 11D.

5/ Computed by multiplying 1970 black population % for county by total 1973 population.

District	Members	Counties	Total 1/ Pop.	Est. '73 5/ Black Pop.	Est. % Black	Est. % BVAP	% Dev.
7	1	Pontotoc	18,337	326	17.8		-3.40
8	3	Lafayette	26,859	7,440	27.7		
		Calhoun	15,062	3,931	26.1		
		Chickasaw	17,026	6,061	35.6		
			59,127	17,432	29.5		+3.77
9	2	Panola	27,460	14,087	51.3		
		Yalobusha	12,395	5,008	40.4		
			39,855	19,095	47.9		+4.92
10	3	Coahoma	38,765	24,926	64.3		
		Quitman	15,187	8,717	57.4		
			53,952	33,643	62.4	55.74	-5.30
11 (Floterial)							
Subdist. A	1	Bolivar County SD1, SD2: Longshot and Pace precincts, SD3, SD4: Merogild precinct	25,392	19,198	75.60	68.58	+9.43
Subdist. B	1	Bolivar County SD2 precincts: West Cleveland, East Central Cleveland, Central Cleveland, SD4: North Cleveland	24,625	11,516	46.76		+7.03
Subdist. C	1	Washington County SD1: Episcopal Church precinct, SD2: Woods Recreation Center precinct, SD3: American Legion Precinct, SD4: County Garage Precinct SD5: Fulton County and Municipal Airport precinct	26,491	10,438	39.40		+12.42
Subdist. D	1	Washington County SD1: minus Episcopal Church precinct, SD2: Brown's Recreation Center precinct, SD3: minus American Legion precinct	26,857	16,122	60.02	54.63	+13.45

District	Member	Counties	Total 1/ Pop.	Est. '73 5/ Black Pop.	Est. % Black	Est. % BVAP	% Dev.
Subdist. E	1	Washington County SD2, Arcola Health Clinic and Avon Health Clinic precincts, SD4: Leland Community Center and Leland City Hall precincts, SD5: minus Fulton County and Municipal Airport precinct	22,863	14,768	64.5	59.39	-1.16
Dist.-wide	1	Bolivar	49,472	30,376	61.4		6/
		Washington	71,158	38,781	54.5		
			120,630	69,157	57.3	50.56	
12A	1	Sunflower SD2: Sunflower and Moorehead precincts, SD4: minus Boyer precinct, SD5	18,058	11,210	62.1	54.00	-4.92
12B	1	Sunflower SD1, SD2: remainder SD3, SD4: Boyer precinct	16,430	10,467	63.3	55.7	-13.50
13A	1	Leflore SD3: Central Greenwood precinct SD4, 5	20,074	14,750	73.5	68.19	+5.70
13B	1	Leflore SD1, SD2, SD3 minus Central Greenwood precinct	21,395	9,251	43.2		+12.65
14	1	Tallahatchie	18,607	11,201	60.2	51.82	-2.02
15	1	Grenada	20,054	8,784	43.8	43.80	+5.59
16	3	Carroll	9,361	4,755	50.8		
		Montgomery	13,242	5,932	44.8		
		Webster	10,137	2,271	22.4		
		Attala	19,630	7,822	40.4		
			52,370	20,780	39.7		-8.10

6/ Deviation computed as explained in submission of statistical analysis of H.B. 1290 and S.B. 2976 filed June 20, 1975. Representation factor = .0000526.

District	Member	Counties	Total 1/ Pop.	Est. '73 5/ Black Pop.	Est. % Black	Est. % BVAP	% Dev.
17	2	Oktibbeha	30,726	10,693	34.8		
		Choctaw	8,496	2,379	28.0		
			39,222	13,072	33.3		+3.25
18	3	Monroe	34,811	10,617	30.5		
		Clay	19,136	9,453	49.4		
			53,947	20,070	37.2		-5.30
19	3	Lowndes	53,483	17,437	32.7		-6.13
20	2	Winston	18,982	7,422	39.1		
		Noxubee	13,700	9,015	65.8		
		Kemper	10,170	5,573	54.8		
			42,852	22,010	51.36	43.71	+12.86
21	2	Leake	17,484	6,242	35.7		
		Neshoba	21,681	4,272	19.7		
			39,165	10,514	26.8		+3.10
22	3	Madison	31,904	19,876	62.3		
		Yazoo	26,491	14,147	53.4		
			58,395	34,023	58.3	52.45	+2.49
23	2	Holmes	22,498	15,321	68.1		
		Humphreys	14,109	9,143	64.8		
			36,607	24,464	66.8	59.37	-3.60
24	3	Sharkey	8,605	5,567	64.7		
		Issaquena	2,403	1,490	62.0		
		Warren	46,070	18,797	40.8		
			57,078	25,854	45.3		+0.18
25	2	Claiborne	10,113	7,544	74.6		
		Copiah	25,880	13,018	50.3		
			35,993	20,562	57.1	51.3	-5.24
26 Hinds	1	Twin Pines, 34-36, 42-45, 79, 80	19,053	629	3.30		+0.30
27 Hinds	1	5, 8, 9, 14-17, 32, 33, 37	18,309	641	3.50		-3.59
28 Hinds	1	27, 29, 38-41, 81-83, Liberty Grove	19,265	6,916	35.9		+1.49
29 Hinds	1	2, 4, 6, 10, 18-20, 56	19,589	15,259	77.9	75.44	+3.14

District	Member	Counties	Total 1/ Pop.	Est. '73 5/ Black Pop.	Est. % Black	Est. % BVAP	% Dev.
30 Hinds	1	1, 47, 50, 51, 53, 63, 64	18,799	15,023	80.0	77.62	-1.01
31 Hinds	1	52, 54, 55, 57-59, 66-68	18,206	4,187	23.0		-4.13
32 Hinds	1	11-13, 23, 28, 30	18,668	17,342	92.9	91.94	-1.70
33 Hinds	1	21, 22, 24-26, 31, 60-62	18,254	3,322	18.2		-3.88
34 Hinds	1	49, 69-76	18,379	165	0.9		-3.22

District	Members	Counties	Total 1/ Pop.	Est. '73 5/ Black Pop.	Est. % Black	Est. % BVAP	% Dev.
35-Hinds	1	Tinnin, Pocahontas, Cynthia, Presidential Hills, North Clinton, Clinton 2, 3 and 4, Van Winkle 1, Midway, Flag Chapel, Brownsville	17,848	-	N/A		-6.02
36-Hinds	1	Byram, Old Byram, Precinct 77, Red Hill, Forest Hill, Woodville Heights, Hickory, Fairfax, Terry, Dry Grove, Chapel Hill, Briarcliff	18,353	-	N/A		-3.36
37-Hinds	1	Bolton, Edwards, Cayuga, Utica 1 and 2, Learned, Raymond 1 and 2, Clinton 1, Van Winkle 2	18,128	-	N/A		-4.54
38	4	Rankin	51,864	14,574	28.1		
		Simpson	20,800	6,531	31.4		
			72,664	21,105	29.0		-4.35
39	2	Scott	22,292	7,356	33.0		
		Smith	14,404	2,218	15.4		
			36,696	9,574	26.1		-3.39
40	2	Newton	19,476	5,317	27.3		
		Jasper	16,116	7,478	46.4		
			35,592	12,785	36.0		-6.30
41	4	Lauderdale	71,325	21,969	30.8		-6.11
42	5	Clarke	15,413	5,533	35.9		
		Wayne	16,965	5,581	32.9		
		Jones	59,021	14,460	24.5		
			91,399	25,374	28.0		-3.75
43	3	Covington	14,380	4,688	32.6		
		Lamar	16,925	2,234	13.2		
		Pearl River	27,772	5,082	18.3		
			59,077	12,004	20.3		+3.69

District	Member	Counties	Total 1/ Pop.	Est. '73 5/ Black Pop.	Est. % Black	Est. % BVAP	% Dev.
44	2	Jefferson Davis	12,922	6,487	50.2		
		Marion	23,504	7,310	31.1		
			36,426	13,797	37.9		-4.10
45	4	Lincoln	26,902	8,259	30.7		
		Lawrence	11,421	3,678	32.3		
		Pike	33,291	14,482	43.5		
		Walthall	12,406	5,049	40.7		
			84,020	31,468	37.5		+10.60
46	2	Jefferson	8,806	6,631	75.3		
		Franklin	7,989	3,100	38.8		
		Amite	13,106	6,605	50.4		
		Wilkinson	10,708	7,239	67.6		
			40,609	23,575	58.1	51.20	+6.90
47	2	Adams	37,639	18,029	47.9		-0.91
48	2	Perry	9,370	2,464	26.3		
		Greene	8,507	1,872	22.0		
		George	13,217	1,533	11.6		
		Stone	8,541	1,964	23.0		
			39,635	7,833	19.8		+4.34
49A	1	Forrest SD1: Central School and Lillie Burney precincts, SD2: Jones precinct, SD3: East Bouie, Eaton , Walthall precincts, SD4: Rowan and Wm. Cary precincts	20,767	12,931	62.27	57.16	+9.34
49B	1	Forrest SD1: Blair, Woodley West Side precincts, SD2: Rawls Springs, Eatonville, Glendale, Petal-Leeville precincts SD5: Grace Christain and Pinecrest precincts	21,076	608	2.88		+10.97

District	Members	Counties	Total 1/ Pop.	Est. '73 5/ Black Pop.	Est. % Black	Est. % BVAP	% Dev.
49C	1	Forrest SD1: Dixie precinct SD2: Petal High School precinct SD3: Macadonia, Sunrise, Petal-Harvey School precincts SD4: McLaurin, McCalium, Dixie-Pine, Camps, Hawkins, A.H.S. SD5: Davis, Maxie, Brooklyn, and Carnes precincts	19,878	2,000	10.06		+4.67
50	1	Hancock	18,351	2,606	14.20		-3.38
51A	1	Harrison County precincts: West No. GPT, Advance, Riceville, Vidalia, Lizana, West Orange Grove, Latimer, Pineville, Delisle, West Lyman, West Saucier, East Saucier, Popular Head, White Plains, Peace, New Hope, East Lyman	19,928	4,282	21.49		+4.93
51B	1	Harrison County precincts: West Pass Christain, East Pass Christain, West Long Beach, East Long Beach, GPT precincts 13, 14	18,377	3,317	12.09		-3.45
51C	1	Harrison County precincts: East No. GPT, GPT 1-4, 8-10	16,350	6,189	37.85		-13.92
51D	1	Harrison County precincts: GPT 5-7 11, 12, W.H., W.M.C.	18,053	2,395	13.27		-4.95

District	Member	Counties	Total 1/ Pop.	Est. '73 5/ Black Pop.	Est. % Black	Est. % BVAP	% Dev.
51E	1	Harrison County precincts: E.H., E.M.C., Biloxi 9-11	16,701	727	4.35		-12.07
51F	1	Harrison County Biloxi precinct 8	20,961	1,145	5.46		+10.37
51G	1	Harrison County Biloxi precincts 3-7A	16,583	5,571	33.59		-12.68
51H	1	Harrison County Biloxi precincts 1, 2 precincts D'lberville Holly Hills, Howard Creek, East Orange Grove, Stonewall	20,015	915	4.57		+5.39
52A	1	Jackson SD4: Latimer and St. Martin precincts SD5: minus N. Pascagoula, Fire Station and Sattelite precincts	20,252	1,128	5.87		+6.63
52B	1	Jackson SD2, SD5: Fire Station precinct	21,245	1,173	44.67		+11.86
52C	1	Jackson SD3, SD5: N. Pascagoula precinct	21,200	3,017	14.22		+11.62
52D	1	Jackson SD1	20,878	2,462	11.79		+9.93
52E	1	Jackson SD4: minus Latimer and St. Martin precincts SD5: Sattelite precinct	20,252	1,128	5.33		+6.63

EXHIBIT B-2

Population Projections Per District
For Hinds County 1/

	1970 Pop.	1973 Pop.	Percent Change
Hinds County	214,973	223,105	+3.8%

House Dists.	1970 Pop.	1970 Blk. Pop.	1973 Pop.	1973 Blk. Pop.	% Blk.
26	18,356	606	19,053	629	3.30%
27	17,639	616	18,309	641	3.49%
28	18,560	6,654	19,265	6,916	35.85%
29	18,872	14,692	19,589	15,259	77.85%
30	18,111	14,489	18,799	15,023	80.0%
31	17,540	4,038	18,206	4,187	23.02%
32	17,985	16,701	18,668	17,342	92.86%
33	17,586	3,208	18,254	3,322	18.24%
34	17,707	151	18,379	165	0.85%
35	17,195	-----	17,848	------	------
36	17,682	-----	18,353	------	------
37	17,965	-----	18,128	------	------

1/Since 1973 population information is available only on a county-wide basis; it was assumed that the increase in the county's population was evenly dispersed throughout the districts within the county.

EXHIBIT B-3

POPULATION PROJECTIONS PER DISTRICT */

District	1970 Pop.	1970 Black Pop.	% County Change 1970-73	Est. 1973 Pop.	Est. 1973 B. Pop.
11A	25,141	19,008	+0.1	25,392	19,198
11B	24,381	11,402	+0.1	24,625	11,516
11C	24,529	9,665	+0.8	26,491	10,438
11D	24,868	14,928	+0.8	26,857	16,122
11E	21,169	13,674	+0.8	22,863	14,768
12A	19,417	12,054	-0.7	18,058	11,210
12B	17,667	11,255	-0.7	16,430	10,467
13A	20,380	14,975	-1.5	20,074	14,750
13B	21,721	9,392	-1.5	21,395	9,251
49A	19,427	12,096	+6.9	20,767	12,931
49B	19,716	569	+6.9	21,076	608
49C	18,595	1,871	+6.9	19,878	2,000
51A	18,401	3,954	+8.3	19,928	4,282
51B	16,969	3,063	+8.3	18,377	3,317
51C	15,097	5,715	+8.3	16,350	6,189
51D	16,669	2,211	+8.3	18,053	2,395
51E	15,421	671	+8.3	16,701	727
51F	19,355	1,057	+8.3	20,961	1,145
51G	15,312	5,144	+8.3	16,583	5,571
51H	18,481	845	+8.3	20,015	915

*/ Since 1973 population information is available only on a county-wide basis; it was assumed that the increase in the county's population was evenly dispersed throughout the districts within the county.

District	1970 Pop.	1970 Black Pop.	% County Change 1970-73	Est. 1973 Pop.	Est. 1973 B. Pop.
52A	16,910	993	+18.1	19,971	1,173
52B	17,989	8,036	+18.1	21,245	9,491
52C	17,959	2,555	+18.1	21,200	3,017
52D	17,678	2,085	+18.1	20,878	2,462
52E	17,148	955	+18.1	20,252	1,128

EXHIBIT B-4

HOUSE COUNTY BOUNDARY PLAN: VAP COMPUTATIONS

Dist.	No. of Reps.	County(ies)	WHITE VAP	BLACK VAP	TOTAL VAP	% BLACK VAP
3	2	Marshall	6,658	8,446		
		Benton	2,972	1,420		
			9,630	9,866	19,496	50.6%
10		Coahoma	9,129	12,608		
		Quitman	4,189	4,166		
			13,318	16,774	30,092	55.74%
11		Bolivar	13,209	14,796		
		Washington	20,563	19,747		
			33,772	34,543	68,315	50.56%
11A		Bolivar (Part)	4,284	9,351	13,635	68.58%
11D		Washington (Part)	6,818	8,209	15,027	54.63%
11E		Washington (Part)	5,141	7,520	12,661	59.39%
12A		Sunflower (Part)	4,761	5,589	10,350	54.00%
12B		Sunflower (Part)	4,146	5,219	9,365	55.73%
13A		Leflore (Part)	3,593	7,704	11,297	68.19%
14		Tallahatchie	4,998	5,375	10,373	51.82%
20		Winston	8,042	3,969		
		Noxubee	3,218	4,521		
		Kemper	3,421	2,914		
			14,681	11,404	26,085	43.71%
22		Madison	7,960	10,375		
		Yazoo	8,163	7,410		
			16,123	17,785	33,908	52.45%
23		Holmes	5,199	7,982		
		Humphreys	3,322	4,470		
			8,521	12,452	20,973	59.37%
25		Claiborne	1,809	4,504		
		Copiah	9,086	6,974		
			10,895	11,478	22,373	51.30%

Dist.	No. of Reps.	County(ies)	WHITE VAP	BLACK VAP	TOTAL VAP	% BLACK VAP
29		Hinds	2,940	9,034	11,974	75.44%
30		Hinds	2,564	8,895	11,459	77.62%
32		Hinds	900	10,268	11,168	91.94%
46		Jefferson	1,547	3,493		
		Franklin	3,430	1,723		
		Amite	4,543	3,289		
		Wilkinson	2,335	3,932		
			11,855	12,437	24,292	51.20%
49A		Forest (Part)	5,497	7,334	12,831	57.16%

EXHIBIT C-1

Senate Restricted Fractionalization Plan

I. Total population 2,216,912 1/

Number of seats 52

Ideal population per seat 42,634

II. Deviations

Districts with more than +5% dev. 14 2/

Greatest minus deviation -8.07% 3/

Greatest plus deviation +9.60% 4/

Total deviation range 17.67%

III. Description

District	# of Reps.	Description	Total Pop. 1/	Black Pop.	% Black	% Black VAP	Dev.
1	2	Monroe Beat 1, 2, 3 except Aberdeen 3d, 5 Aberdeen Prec. Lowndes Beats 1, 2, 3 Tishomingo: All Itawamba: All	85,490	9,881	11.55		+ .26%
2	1	Alcorn: All minus Beat 5 Prentiss: All	41,390	5,356	12.94		- 2.91%
3	1	Union: All Tippah: All Alcorn Beat 5 Benton Beat 5	42,219	5,841	13.83		- .97%
4	1	Benton Beats 1-4 Marshall: All Tate Beats 3, 4, 5	41,851	24,027	57.41	49.80	- 1.83

1/ 1970 Census Statistics.

2/ Districts 6, 10, 11, 18, 20, 24, 25, 27, 33, 35, 38, 40, 45, 46.

3/ District 35.

District	# of Reps.	Description	Total Pop. 1/	Black Pop.	% Black	% Black VAP	Dev.
5	1	Desoto: All Tate Beats 1 & 2	42,761	15,135	35.39		+ .29%
6	1	Bolivar Beats 3 minus precinct Mound Bayou Coahoma: All	46,392	30,468	65.67	59.64	+ 8.81%
7	1	Tallahatchie Beats 1, 4, 5 Quitman: All Tunica: All	41,196	25,928	62.93	55.50	- 3.37%
8	1	Tallahatchie Beats 2 & 3 Panola: All Yalobusha: All	44,628	21,985	49.26		+ 4.67%
9	1	Lafayette: All Pontotoc: All	41,544	9,802	23.59		- 2.55%
10	1	Lee: All	46,148	9,548	20.68		+ 8.24%
11	1	Clay: All Oktibbeha Beats 2 & 5 Monroe: Beat 5 Aberdeen EDs Beat 4 All Beat 3 Precinct Aberdeen 3rd	46,729	20,085	42.98		+ 9.60%
12	1	Calhoun: All Chickasaw: All Webster: All	41,475	12,042	29.03		- 2.71%
13	1	Carroll: All Montgomery: All Grenada: All	42,169	19,248	45.64		- 1.09%
14	1	Leflore: All	42,111	24,374	57.88	51.99	- 1.22%
15	1	Washington Beat 4 Sunflower Beats 2-5	44,362	26,657	60.08	52.80	+ 4.05

District	# of Reps.	Description	Total Pop. 1/	Black Pop.	% Black	% Black VAP	Dev.
16	1	Bolivar Beats 1, 2, 4, 5 Beat 3 Mound Bayou	43,464	26,131	60.12	51.49	+ 1.94%
17	1	Washington Beats 2, 3, 5	42,590	22,264	52.27	46.75	- 0.10%
18	1	Holmes: All Humphreys: All Sunflower Beat 1	44,821	30,478	67.99	60.78	+ 5.12%
19	1	Scott Beat 4 Leake: All Attala: All	41,102	15,373	37.40		- 3.59%
20	1	Oktibbeha remainder Choctaw: All Winston: All	40,123	14,246	35.50		- 5.88%
21	1	Lowndes Beats 4 & 5 Noxubee: All Kemper: All	44,201	32,589	73.70	67.43	+ 3.67%
22	1	Lauderdale Beats 1, 3, 5	39,898	9,609	24.08		- 6.41%
23	1	Lauderdale Beats 2, 4 Newton Beats 1, 2, 4, 5	42,499	15,194	35.75		- .31%
24	1	Newton Beat 3 Neshoba: All Scott 1-3, 5	42,509	13,047	30.69		- .29%
25	1	Yazoo Beats 1, 2, 4 Zions & Center Ridge Precincts Madison: All	40,068	23,110	57.67	51.88	- 6.01%

District	# of Reps.	Description	Total Pop. 1/	Black Pop.	% Black	% Black VAP	Dev.
26	1	Sharkey: All Issaquena: All Washington Beat 1 Yazoo Beat 5, Beat 3 minus Zion Center & Ridge Precincts	42,163	25,480	60.43	54.22	- 1.10%
27	1	Warren: All	44,981	18,355	40.81		+ 5.50%
		Hinds County (5 single member districts)					
28	1	Twin Pines, Liberty Grove 1, 5, 8, 9, 14-17, 32-38, 42-45, 79-82	42,271	2,150	5.28		- .85%
29	1	11-13, 21-31, 39-41, 83	43,252	26,157	60.47	57.40	+ 1.44%
30	1	2, 4, 6, 10, 18-20, 47, 50- 58, 63, 64	44,655	29,796	66.77	64.43	+ 4.74%
31	1	Alt I 49, 66-77, Byram, Old Byram, Red Hill, Forrest Hill, Woodville Heights, Hickory, Fairfax, Terry, Dry Grove Chapel Hill, Briarcliff	41,755	---	---		- 2.06%
		Alt II 49, 66-77, 59-62 Byram, Old Byram, Red Hill, Terry, Dry Grove, Chapel Hill	42,900	---	---		+ .62%

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District	# of Reps.	Description	Total Pop. 1/	Black Pop.	% Black	% Black VAP	Dev.
32	1	Alt I Tinnin, Pocahontas, Cynthia, Presi- dential Hills, North Clinton Clinton 2, 3, 4 Van Winkle I, Midway, Flag Chapel, Brownsville, Bolton, Edwards, Cayuga, Utica 1 & 2, Learned, Raymond 1 & 2, Clinton 1, Van Winkle 2, Prec. 59-62	42,569				- .15%
		Alt II All of above except Prec. 59- 62, plus: Fairfax, Hickory, Woodville Heights, Briarcliff, Forrest Hill	41,424				- 2.83%
33	1	Rankin: All	44,981	18,355	40.81		+ 5.50%
34	1	Smith: All Jasper: All Clarke: All	44,604	14,900	33.41		+ 4.62%
35	1	Wayne Beats 4-5 Jones Beats 1, 3, 4	39,191	9,501	24.24		- 8.07%
36	1	Covington: All Jeff. Davis Beats 2, 3, 4 Jones Beats 2, 5	43,136	13,580	31.48		- 1.17%
37	1	Jeff. Davis Beats 1 & 5 Simpson: All Lawrence: All Copiah Beat 2	41,539	14,452	34.79		- 2.56%
38	1	Claiborne: All Jefferson: All Copiah Beats 1, 3-5	39,311	24,898	63.33	57.47	- 7.7%

District	# of Reps.	Description	Total Pop. 1/	Black Pop.	% Black	% Black VAP	Dev.
39	2	Pike Beats 2-5 Lincoln: All Franklin: All Adams Beats 3, 4, 5	83,240	34,198	41.08		- 2.37%
40	1	Amite: All Wilkinson: All Adams Beat 1 & 2	39,617	20,820	52.55	46.75	- 7.07%
41	1	Marion: All Walthall: All Pike Beat 1	40,533	14,449	35.64		- 4.92%
42	2	Lamar: All Forrest: All Stone: All	81,157	18,028	22.21		- 4.82%
43	1	George: All Greene: All Perry: All Wayne Beats 1-3	41,530	9,077	21.85		- 2.59%
44	2	Jackson: All	87,975	14,258	16.20		+ 3.17%
45	3	Harrison: All	134,582	22,743	16.90		+ 5.22%
46	1	Pearl River: All Hancock: All	45,189	7,591	16.79		+ 5.99%

EXHIBIT C-2

Senate Restricted Fractionalization Plan
VAP Computations

District	County	WVAP	BVAP	TVAP	% BVAP
4	Benton	2,251	1,323		
	Marshall	5,957	7,578		
	Tate	3,750	2,965		
		11,958	11,866	23,824	49.80
6	Coahoma	9,389	13,235		
	Bolivar	1,033	2,170		
		10,422	15,405	25,825	59.64
7	Tunica	2,140	4,167		
	Quitman	4,330	4,398		
	Tallahatchie	3,549	3,932		
		10,019	12,497	22,516	55.50
14	Leflore	11,846	12,830	24,676	51.9[illegible]
15	Washington	3,648	4,415		
	Sunflower	8,315	8,968		
		11,963	13,383	25,346	52.80
16	Bolivar	11,989	12,728	24,717	51.49
17	Washington	12,909	11,337	24,246	46.75
18	Holmes	5,321	8,219		
	Humphreys	3,405	4,645		
	Sunflower	1,269	2,630		
		9,995	15,494	25,489	60.78
21	Noxubee	3,327	4,713		
	Kemper	3,340	2,935		
	Lowndes	1,550	9,367		
		8,217	17,015	25,232	67.43
25	Madison	7,378	9,680		
	Yazoo	3,815	2,390		
		11,193	12,070	23,263	51.88
26	Yazoo	4,600	5,247		
	Sharkey	2,092	2,703		
	Issaquena	682	886		
	Washington	3,515	4,063		
		10,889	12,899	23,788	54.22

District	County	WVAP	BVAP	TVAP	% BVAP
29	Hinds	11,609	15,645	27,254	57.40
30	Hinds	9,837	17,821	27,658	64.43
38	Claiborne	1,786	4,491		
	Jefferson	1,633	3,685		
	Copiah	6,746	5,561		
		10,165	13,737	23,902	57.47
40	Amite	4,762	3,466		
	Wilkinson	2,415	4,073		
	Adams	5,417	3,520		
		12,594	11,059	23,653	46.75

EXHIBIT D-1

House of Representative: Restricted Fractionalization Plan

I. Total Population 2,216,912 1/

Number of Seats 122

Ideal Population Per Seat 18,171

II. Deviations

Districts with more than + 5% dev. 14 2/

Greatest Minus (-) Deviation -7.87 3/

Greatest Plus (+) Deviation +7.89 4/

Total Deviation Range 15.76%

III. Description

Dist.	#of Reps.	Description	Total Pop. 1/	Black Pop	% Black	%Black VAP	%Dev.
1	3	Tippah County Beats 1, 2, 4,5 Alcorn County: All Tishomingo County (All)	54,405	5,636	10.36		-0.19
2	1	Marshall County Remainder Beat 1 Beat 5 Benton County: All Tippah County Beat 3	17,660	6,758	38.26		-2.81

1/ 1970 Census.

2/ Districts 18,28,38,41,46,67,72,74,75,80,87,103,106,107.

3/ District 80.

4/ District 75.

Dist.	# of Reps.	Description	Total Pop.[1]	Black Pop.	% Black	%Black VAP	%Dev.
3	1	Marshall County Beats 2, 3, 4 Beat 1 except Prec. East of Holly Springs	17,438	12,086	69.30	63.72	- 4.03
4	1	DeSoto County Beats 1, 5 Beat 4 Prec.: Nesbitt West, Fernando West, Oak Grove	17,675	8,483	47.99		-2.73
5	1	DeSoto County Beats 2, 3 Beat 4: Precints Days, Aldens, Entora	18,180	4,128	22.70		+0.04
6	2	Tunica County: All Quitman County Beat 1, 2, 3, 4 Panola County Beat 1, 2 Beat 5: North Curtis Prec. West Sardis Prec.	35,907	25,127	69.98	61.26	-1.20
7	1	Tate County: All	18,544	8,760	47.20		+2.50
8	1	Lafayette County Beats 3, 4 Yalobusha County	18,574	6,352	34.20		+2.21
9	1	Calhoun County Beats 1, 3 Lafayette County S.D. 1, S.D. 2 S.D. 5	18,278	4,706	25.75		+0.58

Dist.	# of Reps.	Description	Total Pop.[1]	Black Pop.	% Black	%Black VAP	%Dev.
10	1	Union County: All Pontotoc County	36,459	6,041	16.56		+0.32
11	1	Lee County Beat 1, 2	18,426	3,750	20.35		+1.40
12	2	Prentiss County: All Itawamba County: All	36,980	3,304	8.93		+3.51
13	1	Lee County Beats 3, 5	18,446	3,813	20.67		+1.51
14	1	Monroe County Beats 1, 5 Beat 2: Minus Athens Precinct, Minus Becker Precinct	18,762	3,953	21.06		+3.25
15	1	Lee County Beat 4 Chickasaw County Beat 3, 4 SD 2: Minus West Houlka Prec. East Houlka Prec.	17,870	5,061	28.32		-1.66
16	1	Chickasaw County Beats 1, 5 Calhoun County: Beats 3,4,5 Beat 2- W. Houlka Prec, E. Houlka Prec.	17,294	5,189	30.00		-4.83
17	1	Yalobusha County Beats 3, 4 Panola County SD 3, SD 4 SD 5: Minus North Curtis Prec. West Sardis Prec. North Sardis West Batesville 1 and 3	18,410	5,653	30.7		+1.31

Dist.	# of Reps.	Description	Total Pop.[1]	Black Pop.	% Black	%Black VAP	%Dev.
18	1	Tallahatchie County Beats 1, 2, 3, 5 Quitman County Beat 5	17,010	11,868	69.77	62.38	-6.39
19	1	Coahoma County *SD 4: Clarksdale Prec. *SD 1 Minus Clarksdale Prec. *SD 3	18,619	14,162	76.06	70.85	+2.46
20	1	Coahoma County *SD 1: Clarksdale Precinct *SD 2 *SD 5: Clarksdale Precinct	17,727	8,111	45.75		-2.45
21	1	Coahoma County Minus Clarksdale Precinct Beat 5: Minus Clarksdale Prec. Bolivar County Beat 3 Beat 4: Merigold Prec.	17,547	13,801	78.65	72.58	-3.43
22	1	Bolivar County Beat 4: North Cleveland Prec., East Cleveland Prec., Beat 5: Boyle Prec., Beat 2: West Cleveland Prec., East Central Cleveland Prec., Central Cleveland Prec.	18,676	7,590	40.64		+2.77
23	1	Bolivar County Beat 1 Beat 2: Longshot Prec., Pace Prec. Beat 5: Minus Boyle Pres.	17,441	12,219	70.05	62.23	-4.02

*SD here means supervisor district or beat.

Dist.	# of Reps.	Description	Total Pop.[1]	Black Pop.	% Black	%Black VAP	%Dev.
24	1	Sunflower County Beat 5, Beat 4: Minus Boyer Prec., Doddsville Prec. Tallahatchie County Beat 4	17,944	7,287	43.61		-1.25
25	1	Grenada County Beats: 1, 3, 4, 5	18,504	7,865	42.5		+1.83
26	1	Leflore County Beat 1: North Greenwood Prec. Beat 2: All Beat 3: West Greenwood Prec. Beat 5: Southeast Cleveland Prec.	18,439	6,381	35.11		+1.48
27	1	Montgomery County Beat 1, 2, 5 Carroll County: All Grenada County Beat 2	18,780	8,146	43.37		+3.35
28	1	Choctaw County Beat 2 Webster County: All Montgomery County Beat 3, 4	17,160	4,769	27.70		-5.47
29	1	Clay County	18,840	9,306	49.40		+3.68
30	1	Monroe County Beat 2 (Remainder) Beat 3, 4 Lowndes County Beat 1: Caladonia Prec.	18,230	6,684	36.66		+0.32
31	1	Lowndes County Beat 1 Minus Caladonia Prec. Beat 2	18,654	3,202	17.16		+2.65

Dist.	# of Reps.	Description	Total[1] Pop.	Black Pop.	% Black	%Black VAP	%Dev.
32	1	Lowndes County Beat 3, Beat 5 Precints: Hunt School, Carrier Lodge Beat 4: Coleman School Precinct	18,749	6,446	34.38		+3.18
33	1	Lowndes County Beat 4 (Remainder) Beat 5 (Remainder) Noxubee Beats 1, 2, 3	17,895	11,782	65.83	59.47	-1.52
34	1	Noxubee County Beats 4, 5 Kemper County: All Lauderdale County: Precincts: East Lauderdale Lauderdale Dalewood Lockhart Kewanee	17,895	10,338	57.70	50.01	-1.51
35	1	Oktibbeha County Beat 1, 2	17,364	4,766	27.44		-4.45
36	1	Oktibbeha County Beats 3, 4, 5 Choctaw County: All Minus Beat 2	18,556	7,373	39.73		+2.11
37	1	Winston County: All	18,406	7,198	39.10		+1.29
38	1	Attala County: All	19,570	7,903	40.40		+7.69
39	1	Holmes County Beats 1, 2, 3, 4	18,539	12,243	66.03	58.31	+2.02
40	1	Leflore County Beat 3: Minus Central Green- wood Prec. Beat 4: Minus South Itta Bena Prec. and North Itta Bena Prec. Beat 5: Minus Southeast Green wood Prec. Holmes County Beat 5	18,376	14,053	76.49	71.18	+1.13

Dist.	# of Reps.	Description	Total[1] Pop.	Black Pop.	% Black	%Black VAP	%Dev.
41	1	Leflore County Beat 1: Minter City Prec. Sunflower County Beat 3: Schlater Precinct Beat 4: North Itta Bena Precinct, South Itta Bena Precinct, Doddsville Prec., Boyer Prec. Beat 2	19,116	13,936	72.90	66.72	+5.20
42	1	Sunflower County Beat 1, 3 Beat 2 Indianola Precinct	17,639	11,526	65.34	57.49	-2.93
43	1	Washington County Beat 4: Prec. Leland Com. Cen. Leland City Hall County Garage Beat 5: Fulton Co. Prec.	17,852	11,510	64.47	59.27	-1.76
44	1	Washington County Beat 1: County Ext. Precinct Beat 2: Brown's Rec. Center Precinct Beat 3: Police Station Precinct American Legion Prec.	19,069	11,368	59.6	54.20	+4.94
45	1	Washington County Beat 1: Episcopal Church Precinct Swifter Store prec. Beat 2: Woods Rec. Center Prec. Beat 3: Brent Cen. & Italian Club Prec. Beat 5: Municipal Airport Precinct	17,302	5,573	32.21		-4.79

Dist.	# of Reps.	Description	Total 1/ Pop.	Black Pop.	% Black	% Black VAP	% Dev.
46	1	Washington County Beat 1: Glenn Allen: Beat 2-Avon Health prec., Arcola Health Cl. prec. Sharkey County: All	19,270	11,872	66.60	54.71	+6.04
47	1	Humphreys County Beat 1, 2, 3 Washington County Beat 5: Hollandale City Hall Prec. Country Store Prec. Unnamed precinct	17,896	11,936	66.69	60.11	-1.52
48	1	Yazoo County Beat 3 Minus Precints: Robinette, Cen. Ridge, Valley Humphreys County Beat 3, Beat 4	17,309	9,775	56.47	50.31	-4.75
49	1	Madison County Beat 2, 3, Beat 5: Minus Madisonville Precinct Yazoo County Beat 1: Dover and East Betonia Precincts Beats 2, 4	18,034	10,646	59.70	53.94	-0.76
50	1	Madison County Beat 1,4 Beat 5: Madisonville Prec.	18,492	11,916	64.43	58.83	-1.76
51	3	Scott County Beat 1, 3, 4 Leake County: All Neshoba County: All	51,801	14,514	28.01		-4.98

Dist.	# of Reps.	Description	Total 1/ Pop.	Black Pop.	% Black	% Black VAP	% Dev.
52	1	Lauderdale County SD2: minus precincts East Lauderdale, Lauderdale, Ponta, Dalewood, Lockhart, Kewanie, #6 Meridian SD5: minus #14 Meridian, #15 Meridian Beat 1: prec. 1-4	18,913	3,447	18.22		+4.08
53	1	Lauderdale County Meridian: precincts 6, 9, 13, 14, 15	17,604	10,920	62.03	56.84	-3.13
54	1	Lauderdale County Beat 1 minus: prec. 1-4 Beat 2 Ponta precinct Beat 3 minus: #9 Meridian, Suqualena, Schamberville, Collinsville	18,134	3,195	17.61		-0.21
55	1	Lauderdale County Beat 3 Suqualena, Schamberville, Collinsville Beat 4 minus: #13 Meridian Newton Beat 2, 5	17,510	3,931	22.45		-3.74
56	1	Newton County Beat 1, 3, 4 Scott County Beat 2, 5	19,057	5,949	31.21		+4.87
57	1	Rankin County Beat 3: Cato prec. Beat 2, 4, Beat 5: Antioch, Maryton, Puckett, Johns and Dobson precincts	18,566	5,339	28.75		+2.17

Dist.	# of Reps.	Description	Total 1/ Pop.	Black Pop.	% Black	% Black VAP	%Dev.
58	1	Hinds County Twin Pines, 34-36, 42-45, 79, 80	18,356	606	3.30		+0.30
59	1	Hinds County 5, 8, 9, 14-17, 32-33, 37	17,639	616	3,50		-3,59
60	1	Hinds County 27, 29, 38-41, 81-83, Liberty Grove	18,560	6,654	35.90		+1.49
61	1	Hinds County 2, 4, 6, 10, 18-20, 56	18,872	14,692	77.90	75.44	+3.14
62	1	Hinds County 1, 47, 50, 51, 53, 63, 64	18,111	14,489	80.00	77.62	-1.01
63	1	Hinds County 52, 54, 55, 57-59, 66-68	17,540	4,038	23.00		-4.13
64	1	Hinds County 11-13, 23, 28, 30	17,985	16,701	92.94	91.94	-1.70
65	1	Hinds County 21, 22, 24-26, 31, 60-62	17,586	3,208	18.20		-3.88
66	1	Hinds County 49, 69-76	17,707	151	0.90		-3.22
67	1	Hinds County Tinnin, Pocahontas, Cynthia, Presidential Hills, North Clinton, Clinton 2, 3 and 4, Van Winkle I, Midway, Flag Chapel, Brownsville	17,195	---	N/A		-6.02

Dist.	# of Reps.	Description	Total 1/ Pop.	Black Pop.	% Black	% Black VAP	%Dev.
68	1	Hinds County Byram, Old Byram, Precinct 77, Red Hill, Forest Hill, Woodville Heights, Hickory, Fairfax, Terry, Dry Grove, Chapel Hill, Briarcliff	17,682	---	N/A		-3.36
69	1	Hinds County Bolton, Edwards, Cayuga, Utica 1 and 2, Learned, Raymond 1 & 2, Clinton 1, Van Winkle II	17,965	---	N/A		-4.54
70	1	Issaquena County: All Warren County Beat 1: minus ED's 2, 5, 6 Beat 5: ED 44 Yazoo County Beat 1: precincts: Sataria, Phoenix, Mechanicsburg, West Bentonia Beat 3: precincts: Center Ridge, Valley, Robinette	17,971	8,242	45.86		-1.11
71	1	Warren County ED's 11-34	18,537	11,469	61.87	59.20	+2.01
72	1	Warren County Beat 1: ED's 2, 5 Beat 4: ED's 35, 36, 37 Beat 5: All minus ED 44	17,256	2,960	17.15		-5.04

District	# of Reps.	Description	Total[u] Pop.	Black Pop.	% Black	% Black VAP	Dev.
73	1	Claiborne Co. Beats 1, 2, 3, 4 Jefferson: All	17,777	13,493	75.90%	47.76	-2.17%
74	1	Copiah Co. Beats 1, 4, 5 Claiborne Co. Beat 5	16,969	9,223	54.35%	71.73	-6.62%
75	1	Simpson Co. Beats 3,4,5 Rankin Co. Beat 1	19,606	5,852	29.84%		+7.89%
76	1	Rankin Co. Beat 3 Minus Cato precinct Beat 5 Minus Antioch, Mayton, Puckett Johns and Dobson precincts	18,080	5,358	29.63%		- .50%
77	1	Smith Co. Beats 1,2,3,4 Simpson Co. Beats 1,2	18,425	3,535	19.18%		+1.39%
78	1	Smith Co. Beat 5 Jasper Co.: All	18,778	8,250	43.93%		+3.34%
79	1	Wayne Co. Beat 4 Clarke: All	18,158	6,417	35.33%		-.08%
80	1	Greene Co. Beats 2,5 Wayne Co. Beats 1,2,3,5	16,724	5,641	31.04%		-7.87%
81		Jones Co. Beat 2: Harper Transfer Precinct Beat 3: Precincts: Sanoy Gavin, North Davis School, Glade, Northeast, Myrick, Rustin, Erata Beat 4: Fairgrounds Precinct Beat 5: City Barn Precinct	18,154	9,548	52.59%		-.01%

District	# of Reps.	Description	Total[y] Pop.	Black Pop.	% Black	% Black VAP	Dev.
82	1	Jones Co. Beat 1: precincts: Madison School, 26th St. Fire Station, Lamar School, West, Rural and Sanderville, Sharon, Shady Grove Beat 2: precincts Courthouse, Prentice Beat 3: Sanderville precinct Beat 5: Precincts: Stone Deavours, Maddox School	19,076	765	4.01%		+4.98%
83	1	Covington Co. Beat 1,2,3 Jones Co. Beat 1: precincts Gitano, Matthews, Beat 2: Minus precincts: Courthouse, Prentiss, Harpers Transfer Beat 5: minus precincts Stone Deavours, Maddox School, City Barn	18,766	3,602	19.62		+3.27%
84	1	Covington Co. Beat 4,5 Jefferson Davis: all	18,527	9,436	50.93%	45.36 45.36	+1.95%
85	1	Lawrence Co. Beat 1,2,3,4 Copiah Co. Beat 2,3	18,681	7,582	40.48%		+2.80%
86	2	Pike Co. Beat 1: Allman's Garage Precinct, Progress Library Precinct Beat 2: Pricedale Community Center Precinct Holmesville Comm. Center Pre. Lincoln Co: All Franklin Co.: Beats 2,3,4,5	36,467	13,584	37.25%		+0.34%

District	# of Reps.	Description	Total Pop.[1]	Black Pop.	% Black	% Black VAP	Dev.
87	1	Adams Co. Beat 2 minus Carpenter #1 precinct Beats 3, 5	19,386	6,524	33.00%		+6.68%
88	1	Adams Co. Beats 1,4 Beat 2: Carpenter #1 precinct	17,936	11,341	62.23%	59.47	-1.30%
89	1	Wilkinson Co. All Amite Co. Beats 2,3 Franklin Co. Beat 1	18,217	11,391	67.52%	57.02	+0.25%
90	1	Amite Co. Beats 1,4,5 Pike Co.,Beat 2 Beat 5 minus Old Rueffs Nursing Home Precinct, School Admin. Bldg. Precinct	17,805	8,240	46.27%		-2.02%
91	1	Pike County Beat 1 minus precincts: Allman's Garage Progress Library Beat 2 minus precincts: Princedale Comm. Center, Holmesville Comm. Center Beat 4 Beat 5: Old Rueff's Nursing Home Prec., School Admins. Bldg. Precinct	18,338	7,198	39.25%		+0.91%
92	1	Marion Co. Beat 3 Lawrence Co. Beat 3 Walthall Co: All	18,755	6,766	36.07%		+3.21%
93	1	Marion Co. Beats 1,2,4,5	18,433	5,660	30.70%		+1.44%
94	1	Lamar Co.:All Forrest Co. Beat 1: Dixie Precinct Beat 4: A.H.S. Precinct Beat 5 precincts: Maxie, Brooklyn, Carnes	18,141	2,242	12.35%		-0.16%

District	# of Reps.	Description	Total Pop.[1]	Black Pop.	% Black	% Black VAP	Dev.
95	1	Forrest Co. Beat 1: Blair precinct, Woodly precinct, West Side precinct Beat 2: Rawls Springs Precinct Eatonville precinct Beat 5: Grace Christian precinct Pine Crest precinct Thames precinct	18,584	310	1.66%		+2.27%
96	1	Forrest Co. Beat 1: Lillie Burney precinct, Cent. Sch. prec. Beat 2: Jones precinct, Beat 3: East Bouie precinct, Eaton Precinct, Walthall precinct Beat 4: William Carey precinct, Rowan precinct	17,427	11,693	67.09%	61.96	-4.10%
97	1	Forrest Co. Beat 2: precincts: Petal High School, Petal-Leeville, Glendale Beat 3 precincts: Macadonia, Sunrise, Petal-Harvey Sch. Beat 4 precincts: McLaurin, McCalium, Dixie Pine Camps, Hawkins Beat 5: Davis precinct	18,906	1,939	10.25%		+4.04%
98	1	Perry County: All Jones Co. Beat 3: Tuckers precinct Beat 4: minus Fairgrounds precinct	17,837	3,827	21.45%		-1.84%
99	1	George Co. All Greene Co. Beats 1,3,4	17,729	2,134	12.03%		-2.44%
100	1	Jackson Co. Beat 1	17,678	2,085	11.79%		-2.72%

District	# of Reps.	Description	Total Pop.	Black Pop.	% Black	% Black VAP	Dev.
101	1	Jackson Co. Beat 2 Beat 5: Fire Station precinct	17,989	8,036	44.67%		-1.01%
102	1	Jackson Co. Beat 3 Beat 5: N. Pascagoula prec.	17,959	2,555	14.22%		-1.17%
103	1	Jackson Co. Beat 4 minus precincts: Latimer S. Fountainbleau S. Gautier	18,332	978	5.33%		+0.88%
104	1	Jackson Co. Beat 4 precincts: Latimer, S. Fountain-bleau, S. Gautier Beat 5minus precincts: N. Pascagoula, Fire Sta., Harrison Co. precincts: East Sauicer,Popular Head, White Plains, Peace, New Hope, Stonewall	18,280	1,150	6.29%		+0.59%
105	1	Harrison Co. Biloxi precincts: 2-7A	18,343	5,427	25.59%		+0.94%
106	1	Harrison Co. Biloxi precinct 8	19,355	1,052	5.36%		+6.51%
107	1	Harrison Co. Holly Hills, D'Ibberville, Howard Creek Biloxi precints: 1,9,10,11	19,126	156	0.82%		+5.26%
108	1	Harrison Co. GPT Precincts: 7,11,12 W.H., WMC, EMC, EH	17,912	1,643	9.60%		-1.42%
109	1	Harrison Co. GPT Precincts: West No GPT East No GPT 3, 4,5,6,8,9,10	18,773	9,042	48.18%		+3.26%

District	# of Rep.	Description	Total Pop.	Black Pop.	% Black	% Black VAP	Dev.
110	1	Harrison Co. precincts: West Pass Christian East Pass " " West Long Beach East Long Beach GPT precincts 1,2,13,14	19,411	3,070	15.81%		+6.80%
111	1	Harrison Co. precincts: West Saucier, Advance, Riveville, West Lyman, West Orange Grove, Vidula Ladner, Pineville, East Orange Grove, East Lyman, Lizana	17,906	1,221	6.81%		-1.46%
112	1	Hancock Co: All	17,387	2,467	14.2%		-4.32%
113	2	Pearl River Co.: All Stone Co: All	35,903	6,958	19.4%		-1.21%

EXHIBIT D-2

House Restricted Fractionalization Plan
VAP Computations

Dist.	County(ies)	WVAP	BVAP	TVAP	%BVAP
3	Marshall	3,503	6,151	9,654	63.72%
6 (2)	Panola	2,251	3,729		
	Quitman	1,903	2,056		
	Tunica (all)	2,140	4,167		
		6,294	9,952	16,246	61.26%
18	Tallahatchie	2,555	5,119		
	Quitman	877	574		
		3,432	5,693	9,125	62.38%
19	Coahoma	2,940	7,149	10,089	70.85%
21	Coahoma	621	1,615		
	Bolivar	1,940	5,164		
		2,561	6,779	9,340	72.58%
23	Bolivar	3,612	5,952	9,564	62.23%
33	Lowndes	2,249	3,202		
	Noxubee	1,907	2,895		
		4,156	6,097	10,253	59.47%
34	Noxubee	1,420	1,841		
	Kemper (all)	3,340	2,935		
	Lauderdale	615	602		
		5,375	5,378	10,753	50.01%
39	Holmes	4,561	6,378	10,939	58.31%
40	LeFlore	2,187	5,513		
	Holmes	783	1,824		
		2,970	7,337	10,307	71.18%
41	Leflore	1,577	3,881		
	Sunflower	1,977	3,243		
		3,554	7,124	10,678	66.72%
42	Sunflower	4,250	5,747	9,997	57.49%

Dist.	County	WVAP	BVAP	TVAP	%BVAP
43	Washington	4,028	5,861	9,889	59.27%
44	Washington	4,891	5,789	10,680	54.20%
46	Washington	2,693	3,078		
	Sharkey (all)	2,092	2,703		
		4,785	5,781	10,566	54.71%
47	Washington	1,042	2,249		
	Humphreys	2,891	3,677		
		3,933	5,926	9,859	60.11%
48	Yazoo	4,440	4,104		
	Humphreys	549	948		
		4,989	5,052	10,041	50.31%
49	Madison	2,523	3,462		
	Yazoo	2,283	2,166		
		4,806	5,628	10,434	53.94%
50	Madison	4,352	6,220	10,572	58.83%
53	Lauderdale	4,733	6,234	10,967	56.84%
61	Hinds	2,940	9,034	11,974	75.44%
62	Hinds	2,564	8,895	11,459	77.62%
64	Hinds	900	10,268	11,168	91.94%
71	Warren	4,553	6,607	11,160	59.20%
73	Copiah	5,066	4,392		
	Claiborne	408	612		
		5,474	5,004	10,478	47.76%
74	Claiborne	1,348	3,879		
	Jefferson (all)	1,633	3,685		
		2,981	7,564	10,545	71.73%
81	Jones	5,861	5,355	11,216	47.74%
84	Covington	1,752	1,490		
	Jefferson Davis	4,315	3,546		
	(all)	6,067	5,036	11,103	45.36%
88	Adams	4,265	6,258	10,523	59.47%
89	Wilkinson (all)	2,415	4,073		
	Amite	1,719	1,488		
	Franklin	474	553		
		4,608	6,114	10,722	57.02%
96	Forrest	4,022	6,552	10.574	61.96%

EXHIBIT E

1960-1970 Population Changes in Counties which are Majority Black

County	Total Pop. Change 1960-1970 1/ Number	Percent	Total Pop. Change 1970-1973 2/ Number	Percent	Total Black Change 1960-1970 1/ Number	Percent
Amite	-1810	-11.62	- 657	-4.8	-1498	-17.75
Bolivar	-5055	- 9.28	+ 63	+0.1	-6325	-17.25
Carroll	-1780	-15.93	- 36	-0.4	-1721	-26.51
Claiborne	- 759	- 7.00	+ 27	+0.3	- 717	- 8.70
Coahoma	-5765	-12.48	-1682	-4.2	-5427	-17.26
Copiah	-2302	- 8.51	+1116	+4.5	-1621	-11.53
Holmes	-3976	-14.67	- 622	-2.7	-3745	-19.22
Humphreys	-4492	-23.53	- 492	-3.4	-3840	-28.87
Issaquena	- 839	-23.46	- 334	-12.2	- 701	-29.22
Jefferson	- 847	- 8.35	- 489	-5.3	- 656	- 8.57
Jefferson Davis	- 604	- 4.46	- 14	-0.1	- 911	-12.30
Kemper	-2044	-16.65	- 63	-0.6	-1600	-22.19
Leflore	-5031	-10.67	- 639	-1.5	-5933	-19.58
Madison	-3167	- 9.62	+2167	+7.3	-5082	-21.51
Marshall	- 476	- 1.94	+2743	+11.4	-2348	-13.62
Noxubee	-2538	-15.08	- 588	-4.1	-2667	-22.11
Panola	-1962	- 6.81	+ 631	+2.4	-2463	-15.19
Quitman	-5131	-24.41	- 701	-4.4	-4134	-31.20
Sharkey	-1801	-16.77	- 332	-3.7	-1685	-22.56
Sunflower	-8703	-19.02	- 246	-0.7	-7594	-24.61
Tallahatchie	-4743	-19.70	- 731	-3.8	-3768	-24.47
Tunica	-4972	-29.55	- 640	-5.4	-4701	-35.31
Washington	-8057	-10.25	+ 577	+0.8	-4637	-10.76
Wilkinson	-2136	-16.14	- 391	-3.5	-1929	-20.46
Yazoo	-4349	-13.74	- 823	-3.0	-4180	-22.28

1/ Figures for 1960 were taken from 1960 Census PC(1)-26B, Table 28; figures for 1970 were taken from 1970 Census PC(1)-B26, Table 36.

2/ Figures derived from Population Estimates for 1973 (Census Series P-25, #569).

EXHIBIT F

Counties for which voting precinct information has not been acquired.

I. Counties for which it was indicated that no precinct map(s) were available: (20)

Amite
Choctaw
Covington
Franklin
Humphreys
Issaquena
Itawamba
Jefferson
Lawrence
Pontotoc
Prentiss
Sharkey
Stone
Tallahatchie
Tippah
Union
Walthall
Warren
Wayne
Yalobusha

II. Counties which have provided beat map only: (8)

Calhoun
Claiborne
Hancock
Holmes
Jefferson Davis
Neshoba
Noxubee
Oktibbeha

III. Counties for which it was indicated that a precinct map(s) would be mailed: (9)

Alcorn
Attala
Carroll
Greene
Grenada
Jasper
Kemper
Leake
Tishomingo

[Certificate of Service Omitted]

[Map Exhibits Omitted]

IN THE
UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

Civil Action No. 3830(A)

[Filed Jan. 26, 1976]

[Caption Omitted]

REQUEST FOR HEARING DATE

The United States hereby moves that this Court establish February 10, 1976, as the date for a hearing on the plans for permanent apportionment of the State of Mississippi and any other matters now pending in this cause before the Court.

/s/ Gerald W. Jones
GERALD W. JONES
MICHAEL D. JOHNSON
Attorneys
Department of Justice
Washington, D.C. 20530

IN THE
UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

Civil Action No. 3830(A)

[Filed Jan. 29, 1976]

PEGGY J. CONNOR, ET AL., PLAINTIFFS

v.

WILLIAM L. WALLER, ET AL., DEFENDANTS

AND

UNITED STATES OF AMERICA, PLAINTIFF-INTERVENOR

ORDER

In this case the United States has moved the Court to establish February 10, 1976, as the date for hearing on the plans for permanent apportionment of the State of Mississippi and any other matters now pending in this cause before this Court.

Nothing could hardly give this Court any more satisfaction than to be able to hear and decide this case, putting an end, hopefully, to the litigation which has been running for ten years with numerous decisions which we shall not pause here to recite.

It had been the declared intention of this Court to bring the instant litigation to a decision no later than February 1, 1976.

In the meantime, events have occurred which lead the Court to believe that it most likely is about to receive some badly needed guidance from the Supreme Court of the United States on the perplexing issues involved in this case, the chief of which is impermissible dilution and minimization of the black vote.

The Supreme Court has granted certiorari or noted jurisdiction in the following three cases: United Jewish Organization of Williamsburgh, Inc. v. Wilson, 2 Cir., 1975, 510 F.2d 512, *cert. granted sub nom.* United Jewish Organization of Williamsburgh, Inc. v. Carey, 44 U.S. L.W. 3279 (November 11, 1975); Beer v. United States, D.C. D.C., 1974, 374 F. Supp. 363, *prob. juris. noted*, 419 U.S. 822, 95 S.Ct. 37, 42 L.Ed.2d 45; Zimmer v. McKeithen, 5 Cir., 1973, 485 F.2d 1297 (en banc) *cert. granted sub nom.* East Carroll Parish School Board v. Marshall, 1975, 422 U.S. 1055, 95 S.Ct. 2677, 45 L.Ed. 2d 707.

The *Beer* case has already been orally argued.

In the light of the foregoing, it is ORDERED

That further hearing and decision of this case will be deferred until the Supreme Court shall have decided the above cases and until this Court can hear the case in the light of any rules, standards, or other guidance which may appear in said decisions.

When the Supreme Court shall have decided said cases, this Court will bring this case to trial forthwith.

SO ORDERED, this the 26th day of January, 1976.

/s/ Jas. P. Coleman
United States District Judge

/s/ Dan M. Russell, Jr.
Chief United States District Judge

/s/ Arnold Cox
United States District Judge

IN THE
UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

Civil Action No. 3830(A)

PEGGY J. CONNOR, ET AL., PLAINTIFFS

v.

WILLIAM L. WALLER, ET AL., DEFENDANTS

AND

UNITED STATES OF AMERICA, PLAINTIFF-INTERVENOR

[No. 75-1184—PEGGY J. CONNOR v. J. P. COLEMAN, United States District Judge, et al.]

Before COLEMAN, Circuit Judge, RUSSELL, Chief District Judge, and COX, District Judge.

COLEMAN, Circuit Judge.

GENTLEMEN OF COUNSEL:

The Court is convened today in compliance with the decision of the Supreme Court, rendered May 19, 1976, in No. 75-1184, Connor v. Coleman.

Like all courts, this Court must, and will, comply with the directives of the Supreme Court of the United States. There will be no reluctance, no foot dragging, and no hanging back.

For the benefit of the record, the three Judges of this Court wish to state, as they have stated heretofore, that they have never had any purpose of delaying decision in this case beyond the time required by appropriate judicial practice and procedure. The sooner this case is

decided, the better for all concerned, especially so for the benefit of judges with crowded calendars and swollen case loads. The only good case is one in which a final judgment has been rendered and the books have been closed.

The Constitution of the United States must be observed. There has never been any argument about that in this case, and there could have been none. The problem has been, and is, what does the Constitution require?

We certainly know what it requires with reference to one man-one vote. The cases on that subject are plain and unambiguous. The troublesome problem has been the issue of impermissible dilution, minimization or cancellation of black voting strength in certain areas of the State. The existence of that issue explains the presence of the United States as a party to this litigation.

In 1966 and 1971 this Court struck down, as violative of the Federal Constitution, reapportionment acts of the Mississippi Legislature. The plan promulgated by this Court for the 1967 legislative election was not appealed and thereby became a final judgment. The Supreme Court expressly declined to set aside the 1971 elections, held according to a plan devised by this Court. Our plan for the 1975 legislative elections was not attacked either by appeal or by motion for a stay. Thus, it is an indisputable fact of history that the last three quadrennial legislative elections in Mississippi have been held in compliance with the good faith efforts of this Court to mandate compliance with the Federal Constitution.

In any event, without issuing a writ of mandamus, but clearly suggesting that one might be issued if the case came to the merits, the Supreme Court has told this Court what it should do with this case. We propose to do exactly as we have been told to do. It is our duty to do so and we have no hesitancy about performing that duty.

As we understand the Supreme Court opinion of May 19, it is our judicial duty, without delay, to do the following:

(1) We are no longer to postpone the hearing on the permanent plan for legislative reapportionment and the

case should be brought to trial forthwith. The hearing and trial are to proceed this day.

(2) This Court must enter a final judgment embodying a permanent plan reapportioning the Mississippi Legislature for the 1979 quadrennial elections. This we are ready to proceed with.

(3) We are to order any necessary special elections to be held to coincide with the November 1976 Presidential and congressional elections, or in any event at the earliest practicable date thereafter. This we shall do.

As soon as a permanent plan can be formulated, with the aid of the parties and the special master, any necessary special elections will be ordered. We are certain that any such elections must be held in compliance with the laws of Mississippi governing special elections as in the case of other vacancies. If no candidate receives a majority of the vote cast on the first day there will have to be a run-off between the two receiving the highest number of votes. These elections, where required, will be held at the earliest possible date, either before or after the Presidential election. We suggest that those interested in running in a special election prepare themselves to move out expeditiously if and when a date is set.

This litigation has been the subject of several prior hearings. The problem is already well defined. Finding Constitutional solutions in regard to a state with 82 counties, 122 representatives, and 52 senators, solutions which will meet the approval of the Supreme Court of the United States, is the task before us.

As a partial statement of our views, which are subject to change upon further proof and argument, we are presently of the opinion that no special election should be required for those districts in which the permanent plan represents no territorial change from the temporary plan. In other words, as to those districts, the people have spoken and we can conceive of no warrant for requiring them to speak again.

We are further of the opinion that no special election should be required in any new legislative district unless the district used in the temporary plan in that particular geographical area was either impermissibly malapportioned or caused an impermissible dilution of black voting strength.

Thus, from our present knowledge of this case, neither the Constitution nor the law nor equity would require the holding of special legislative elections throughout the State of Mississippi.

Of course, the exact localities of such special elections cannot be spelled out until we have first formulated the permanent plan.

The special master will not formulate the plan. This Court will formulate the plan, but in doing so we expect to have the assistance of the special master in the acquistion and application of the appropriate data.

We think it is in order for us to point out that we recognize the following policies which have to be taken into consideration in the formulation of the permanent plan of legislative reapportionment.

(1) Mississippi has always had a system of permanent registration of voters. Once a voter is registered as a resident of any voting precinct he remains registered there until he either moves away or dies. Obviously, the smallest governmental unit in the Mississippi electoral scheme is the voting precinct. Unless this is kept in mind elections could not be effectively conducted. The Bureau of the Census does not take the census by precincts, as it did in former years. Therefore, we do not have specific population figures for voting precincts. This poses a problem in connection with figuring actual population figures in any one precinct. We think, however, there are reasonably dependable ways by which this problem can be overcome without doing violence to the one man-one vote rule.

(2) As has been developed in prior opinions of this Court, from its admission into the Union until the present time Mississippi has had a well defined policy, articulated in its Constitutions, of not fracturing county lines in the formulation of legislative districts. The basis of this policy is that the county is the fundamental unit of state government. All state law—criminal, civil and administrative—has uniformly rested on that founda-

tion. We think this policy has to yield to the requirements of the Constitution of the United States, but only in those instances wherein it would cause a conflict with the Constitution. Therefore, the permanent legislative reapportionment plan will fracture county lines only in those instances where there is no other way to avoid a violation of the Federal Constitution.

(3) In like manner, Mississippi has always adhered to the policy of using multi-member districts for the selection of legislators. This policy does not violate the Federal Constitution, except possibly in large multi-member districts.

(4) It is also true that in several instances Mississippi has had the policy of subdividing counties for the election of legislators, such as in Bolivar, Carroll, Chickasaw, and Hinds Counties. Consequently, subdivisions within a county in the permanent legislative plan would not offend state policy and may be freely utilized where otherwise appropriate.

We conclude with the following:

The language of the decision of May 19, 1976 (slip opinion at p. 3) indicates that any court ordered reapportionment should comply with the Supreme Court decisions in Mahan v. Howell, 410 U.S. 315 (1973), Connor v. Williams, 404 U.S. 549 (1972), and Chapman v. Meier, 420 U.S. 1 (1975).

It seems to us that Mahan v. Howell stands for the proposition that in legislative reapportionment, a state does not violate the equal protection clause when it pursues a rational objective of preserving the integrity of its political subdivision lines.

Conner v. Williams, 404 U.S. 549 held that "single-member districts are preferable to large multi-member districts as a general matter".

Chapman v. Meier, 420 U.S. 1, asserted that the enforcement of court ordered legislative reapportionment plans is based on the State's Constitution, statutes, and election laws, that a federal reapportioning court may not set up multi-member districts when the state policy

calls for single-member districts, unless the court can articulate a "singular combination of unique factors".

The Court further held that a 20% population variance in a court formulated plan is constitutionally impermissible in the absence of significant state policies or other acceptable considerations that require adoption of a plan with so great a variance. The burden is on the district court to elucidate the reasons necessitating any departure from the goal of population equality and to articulate clearly the relationship between the variance and the state policy furthered.

In *Meier* the Supreme Court concluded:

> "We hold today that unless there are persuasive justifications, a court ordered reapportionment plan of a state legislature must avoid use of multi-member districts, and, as well, must ordinarily achieve the goal of population equality with little more than *de minimis* variation. Where important and significant state considerations rationally mandate departure from these standards, it is the reapportioning court's responsibility to articulate precisely why a plan of single-member districts with minimal population variance cannot be adopted."

This assertion was footnoted with the assertion that "This is not to say, however, that court ordered reapportionment of a state legislature must attain the mathematical preciseness required for Congressional redistricting".

Read together, we think *Mahan*, *Conner*, and *Chapman* teach us that the one man-one vote rule does not make state legislative apportionment the prisoner of blind mathematics and further teaches that federal courts do not sit with a warrant to ignore or nullify either rational state policy or state election laws of general application.

During the course of this litigation, this Court has become aware of another very serious consideration. From the beginning of statehood, by Constitution and statute, Mississippi has always provided that every county should be entitled to at least one member of the House of Rep-

resentatives. Since the county is the basic unit of government, the reason for this policy is obvious. Of course, Senators have not been restricted to one county. There is no policy impediment to putting the Senate strictly on the basis of population norms. Because of our adherence to population norms, however, this Court has deprived a number of counties of the one Representative heretofore guaranteed them by the Mississippi Constitution. The result of this has been that many predominantly black counties, like Noxubee, Kemper, Claiborne, and Jefferson, which join predominantly white counties, have been compelled to share the election of Representatives with those predominantly white counties. They are denied the one Representative guaranteed by the State Constitution.

This, however, is unavoidable. The population norm for a member of the State House of Representatives is 18,171. Seven counties have less than half that amount. Issaquena County has only 2,737 people (1970 census). Thus, to allocate at least one Representative to every county would be "a total subversion of the equal population principle in that legislative body", Reynolds v. Sims, 377 U.S. 533, 84 S.Ct. 1362, 12 L.Ed.2d 506 (1964). This does not mean, however, that we should ignore the general right of a county to one Representative if it has enough people to avoid subverting the equal population principle, *Reynolds, supra.*

We must also note that since last this Court met the Supreme Court has decided East Carroll Parish School Board v. Marshall, —— U.S. ——, 96 S.Ct. 1083, —— L.Ed.2d —— (1976) and Beer v. United States, —— U.S. ——, 96 S.Ct. 1357, —— L.Ed.2d —— (1976).

East Carroll (footnote 6) held that Section 5 of the Voting Rights Act does not control court ordered legislative reapportionment plans. In such cases we must look to Constitutional principles.

Beer held that members of a minority group have no federal right to be represented in legislative bodies in proportion to their numbers in the general population.

We had suggested the formulation of a plan based on 1973 population estimates compiled by the Bureau of the Census. It was our thought that the more recent

figures might help avoid another wholesale chair switching following the Census of 1980. We are now informed, however, that there are no estimates for the population of beats and precincts, so we have been forced to abandon the idea of using 1973 population estimates. The plan to be formulated by the Court will be based on the official returns of the 1970 Census.

Except where there are unusual circumstances justifying some other result, the policy of the permanent plan will be for the establishment of single member legislative districts.

(5) As we understand *Chapman* v. *Meier*, however, we do not have a blanket commission simply to ignore firmly established state policy that county lines not be fractured and that small multiple member districts may be used in those instances where that would afford the best, most practicable way of setting up new legislative districts.

With these preliminary observations, which are subject to change, we invite the parties to proceed. We shall hear first from the Department of Justice.

TRANSCRIPT OF PROCEEDINGS

United States District Court
Southern District of Mississippi
Jackson Division
June 15, 1976

• • • •

[8] JUDGE COLEMAN: We are further of the opinion that no special election should be required in any new legislative district unless the district used in the temporary plan in that particular geographical area was either impermissibly malapportioned or caused an impermissible dilution of Black voting strength.

• • • •

[17] Now one other point or two. We had suggested the formulation of a plan based on 1973 population estimates compiled by the Bureau of the Census. It was our thought that the more recent figures might help avoid another wholesale chair switching following the census of 1980. We are now informed, however, that there are no estimates for the population of beats and precincts, so we have been forced to abandon the idea of using 1973 population estimates. The plan to be formulated by the Court will be based on the official returns of the 1970 census.

• • • •

[19] MR. JOHNSON [Attorney for Plaintiff-Intervenor, United States]: We do have a motion, Your Honor, that we'd like to make on the record, to include all the papers, documents, and pleadings that the United States has filed with this Court into the record at this time.

JUDGE COLEMAN: That motion will certainly be granted. That includes the reports you filed in response to the request of the Court to give us the product of your investigations as to [20] the method in which the first and second Democratic primaries of 1975 and the general election of 1975 were held in Mississippi?

MR. JOHNSON: That's correct, Your Honor. I'd like to present these to the Court, a written copy of the motion.

JUDGE COLEMAN: You may do so.

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IN THE
UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

Civil Action No. 3830(A)

[Filed Aug. 2, 1976]

[Caption Omitted]

MOTION FOR A PROMPT AND IMMEDIATE DECISION ON A FINAL COURT-ORDERED LEGISLATIVE REAPPORTIONMENT PLAN AND SPECIAL ELECTIONS

Plaintiffs, by their attorneys, respectfully move the Court for a prompt and immediate decision on a final court-ordered legislative reapportionment plan and special legislative elections, and in support of their motion, plaintiffs would show to the Court as follows:

1. In its opinion of May 19, 1976, the United States Supreme Court held: "Ten years of litigation have not yet resulted in a constitutionally apportioned Mississippi Legislature." *Connor* v. *Coleman*, —— U.S. ——, 48 L.Ed.2d 295, 297 (1976). By Order of August 1, 1975, this Court indicated its "firm determination" to have a permanent legislative reapportionment plan approved by February 1, 1976, and to order special elections in conjunction with the November 2, 1976 presidential election. The January 29, 1976 stay order staying all further proceedings was disapproved by the United States Supreme Court in its opinion of May 19, 1976, and the Supreme Court held: "There is accordingly no justification on the ground stated for delaying further a final decision in this long-pending case that complies with *Connor* v. *Williams, supra.*" 48 L.Ed2d at 299.

2. This Court held the hearing required by the direction of the Supreme Court on June 15, 1976. At that

hearing, the Court, speaking through Honorable J. P. Coleman, Circuit Judge, stated: "Like all courts, this Court must, and will, comply with the directives of the Supreme Court of the United States. There will be no reluctance, no foot dragging, and no hanging back" (Transcript, June 15, 1976, p. 3). The Court indicated that it was ready to proceed to enter a final judgment embodying a permanent plan for reapportionment of the Mississippi Legislature and to order any necessary special elections, stating: "These elections, where required, will be held at the earliest possible date, either before or after the presidential election. What we're saying is that we are going to proceed with all speed possible and if we can get them out of the way in August or September we are not going to wait for the presidential elections" (*id.*, p. 6).

3. It has now been more than six weeks since the June 15 hearing, and no permanent plan has been promulgated, nor special elections ordered. The Court has had before it the plans proposed by the plaintiffs and plaintiff-intervenor, and the data on which those plans were based, for more than a year. Every day of further delay prejudices the opportunities of those who have been excluded from the Mississippi Legislature by racially discriminatory multi-member districts and at-large voting to gain election in special elections.

The longer the delay, and the shorter the period between promulgation of a permanent plan and special elections, the greater the disadvantage to legislative candidates who are not incumbents to familiarize themselves with the population of their districts, to gain name-recognition and acceptance as a candidate on the part of the voters, to acquaint voters with their legislative proposals and programs, and to raise the necessary funds to mount a successful campaign.

The incumbents have the advantage of having campaigned last year in an area encompassing at least part of the new single-member districts, and voters are familiar with the incumbents, and their platforms and programs. Incumbents, as a result of their past campaigns,

also have established considerable fund-raising capabilities in their respective districts.

Thus, the shorter the time-frame between establishment of the new districts and the special elections, the greater the disadvantage to new candidates who previously were excluded from opportunities to gain election, and the greater the advantage to incumbents who have benefited from the present discriminatory districts.

For these reasons, plaintiffs respectfully move the Court to render a prompt and immediate decision on a permanent plan and special elections.

Respectfully submitted,

/s/ Frank R. Parker
FRANK R. PARKER
Lawyers' Committee for
Civil Rights Under Law
233 North Farish Street
Jackson, Mississippi 39201

Attorney for Plaintiffs

[Certificate of Service Omitted]

IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

Civil Action No. 3830(A)

[Filed Aug. 24, 1976]

PEGGY J. CONNOR, ET AL., PLAINTIFFS,

v.

CLIFF FINCH, ET AL., DEFENDANTS,

and

UNITED STATES OF AMERICA, PLAINTIFF-INTERVENOR.

Before COLEMAN, Circuit Judge, RUSSELL and COX, District Judges.

COLEMAN, Circuit Judge.

For the 1979 quadrennial Mississippi legislative elections, our task is to reapportion both Houses of the Mississippi Legislature.[1]

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[1] The previously reported decisions in this litigation are:

Connor v. Johnson, 256 F. Supp. 692 (1966); 265 F. Supp. 492 (1967) (not appealed); 330 F. Supp. 506 (1971);

Connor v. Williams, 402 U.S. 690, 91 S.Ct. 1760, 29 L.Ed.2d 268 (1971); 330 F. Supp. 521 (1971); 404 U.S. 549, 92 S.Ct. 656, 30 L.Ed.2d 704 (1972);

Connor v. Waller, 396 F. Supp. 1308; 421 U.S. 656, 95 S.Ct. 2003, 44 L.Ed.2d 486 (1975). District Court citations are for the Southern District of Mississippi.

Connor v. Coleman, — —U.S. ——, 96 S.Ct. 1814, —— L.Ed.2d ——.

The District Court orders of June 25, 1975, July 8, 1975, and July 11, 1975, promulgating a temporary plan for the 1975 legislative elections, are not reported.

I. *The Directions of the Supreme Court, May 19, 1976*

In an opinion dated May 19, 1976,[2] the Supreme Court held that this task should be performed agreeably to the teachings of *Mahan* v. *Howell*,[3] *Connor* v. *Williams*,[4] and *Chapman* v. *Meier*.[5]

While a writ of mandamus did not issue, the opinion further held that we should enter

> "a final judgment embodying a permanent plan reapportioning the Mississippi Legislature in accordance with law to be applicable to the election of legislators in the 1979 quadrennial elections, and also ordering any necessary special elections to be held to coincide with the November 1976 Presidential and Congressional elections, or in any event at the earliest practicable date thereafter."

A hearing was scheduled for Wednesday, June 2. The Department of Justice was unable to appear on that date, so the hearing was rescheduled for, and held on, Tuesday, June 15, 1976.

In an effort to expedite the matter as much as possible, William D. Neal, who participated as a special master in the Court ordered reapportionments of 1967 and 1971, was appointed special master, with directions to compile the statistical data necessary to a plan for the fifty-two member State Senate.

Hoyt Holland, heretofore appointed a special master in this litigation, was directed to concentrate his efforts on similar data for the 122 member House of Representatives.

II. *The Practical Aspects of the Task*

The Mississippi Legislature is composed of 122 Representatives and 52 Senators (Sections 254, 255, Mis-

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[2] Connor v. Coleman, *supra*.

[3] 410 U.S. 315, 93 S.Ct. 979, 35 L.Ed.2d 320 (1973).

[4] 404 U.S. 549, 92 S.Ct. 656, 30 L.Ed.2d 704 (1972).

[5] 420 U.S. 1, 95 S.Ct. 751, 42 L.Ed.2d 766 (1975).

sissippi Constitution). In 1970 Mississippi had a population of 2,216,912. The population norm for a Senate Seat is 42,633; for a House Seat it is 18,171.

The State Constitution, Section 254, directs that "in each apportionment each county shall have not less than one Representative".

Thirty eight of Mississippi's eighty two counties have less than 18,171 people. To give every county one Representative would have the result that

> "population is submerged as the controlling consideration in the apportionment of seats in this particular legislative body [and] the right of all the State's citizens to cast an effective and adequately weighted vote would be unconstitutionally impaired if we were to award one Representative to every county", Reynolds v. Sims, 377 U.S. 533, 84 S.Ct. 1362, 1392, 12 L.Ed.2d 506 (1964).

Within the 122 member limit there is no way by which every county may be assigned one Representative. We are thus forced to abandon this standard.

THE INTEGRITY OF COUNTY BOUNDARIES

Since the admission of Mississippi as the twentieth state in the American Union (1817), the county has been the sole unit of state government. This has been considered to be of such critical importance that Section 260 of the Mississippi Constitution provides that no existing county boundary may be altered without the consent of a majority of the voters in the affected part of each of the counties involved.

Mississippi has a system of local and private legislation almost identical to that of Virginia, Miss. Const., 1890, Sec. 89; Mahan v. Howell, 410 U.S. 315 (1973).

Counties having more than one Representative may provide for the election of such Representative by dividing such county into districts for the election of Representatives, Miss. Const., Sec. 254.

Each county is divided into five supervisors districts, Miss. Const., Sec. 170. These districts are known as

"Beats", from the early days when the county governing board was called "The Police Jury", Miss. Code of 1857, p. 414.

The Board exercises executive and judicial functions, including the valuation of property for taxation, the levy of taxes, the expenditure of public funds, the issuance of bonds, and the management of the public roads. The Constitution requires that these officials be elected from the respective Beats, which means that a voting precinct must be located entirely within the same Beat. The voting precincts are of various voting strengths, being erected for the general public convenience, consistently with community patterns.

For about 75 years Mississippi has maintained a system of permanent voter registration. Except in the rare event of a total re-registration, once a person registers to vote within the precinct of his residence he need never register again as long as he continues to reside there. Poll lists for use on election day are maintained accordingly.

From the foregoing it inexorably follows that any single member legislative district has to be constructed primarily from counties, using beats and precincts as necessary to approach or attain the required population norm.

FRACTURING COUNTY BOUNDARIES

From the beginning of statehood the Mississippi State Senate has been elected from districts, generally composed of more than one county.

For 159 years, however, no legislative district has been formed by combining fractions of counties (fracturing county boundaries). For detailed history of this situation in Mississippi, see Connor v. Waller, 396 F. Supp. 1314, 1315.

In deference to this undisputed, well defined state policy, to which the voter is thoroughly accustomed, this Court previously has adhered to the principle that in the reapportionment of legislative seats it would not combine subdivisions of different counties; we would not

fracture county boundaries. Indeed, such fractionalization, carried very far, would seriously disrupt (and impair) the *basic fabric* of Mississippi state government.

There is a practical consideration about fractionalizing counties which, so far, the Supreme Court does not seem to have addressed. If a Beat or a precinct in one county is detached for annexation to another county for the election of a Senator or a Representative, the voter residing in the detached area can certainly vote but the vote from a detached area having a small percentage of the total vote, will have very little weight against the "majority bastion" in the other county, certainly so if the interests of the Balkanized area do not coincide with those of the mass to which it has been attached. Independently of the mathematics demonstrated by mere numbers, dilution of voting strength would, in fact, occur.

The public policy of this State, expressly and repeatedly recognized by state constitutions and statutes, has been to allow multiple member legislative districts, avoiding the fractionalization of counties.

By the use of *multiple member districts*, without fracturing county boundaries, the Mississippi Legislature could be apportioned in a manner which would comply with one man-one vote principles. We are well aware that the Supreme Court has never yet directed any court to fractionalize counties or to fracture county lines. In *Mahan* the right to preserve the integrity of county boundaries was recognized. Yet, we have repeatedly been told that in the formulation of a court ordered legislative reapportionment plan single member districts must be used unless multiple member districts can be justified by unusual circumstances, Chapman v. Meier, *supra*.

There comes a time when stability, the prime requisite of effective government, should be attained. We have decided to divide the State into single member legislaitve districts in the hope that this long-running controversy may at last be terminated and the stability of the Mississippi Legislature restored.

We do not believe, however, that the Supreme Court intends that we should tear state policies to shreds. Both *Mahan* and *Chapman* abound with declarations to the contrary. What we propose to do is to set up single member districts, at the same time preserving as much as possible of the spirit of the rule against breaking counties apart. The policy of having multiple member districts will, of course, have to be ignored.

III. *The Means of Accomplishing the Task*

Mississippi is divided into 82 counties, 410 Beats, and about 1750 voting precincts. It is not a populous State. A deviation of 1% in the population norm for the election of a Representative involves only 181 persons. In the Senate 1% amounts to only 426 persons. If we were to ignore the special circumstances of the case and if percentages were allowed to serve as the sole criteria, we are not left much breathing room in undertaking the conversion of a 159 year old system into single member districts. We cannot change the county lines ordained by law. We have not the machinery with which to realign Beat boundaries. We cannot undertake the reconstitution of voting precincts. A statewide reregistration of voters on newly begun permanent registration rolls would be a task to stagger the most resolute. In short, we have had to take the Counties, Beats, and precincts as they actually are—not what we should prefer if we had been handling these matters for the past century and a half. The special circumstances are further complicated by the fact that the Beats in many Counties have been reapportioned since the Census of 1970, so the figures for that year no longer accurately reflect the facts. In such instances, we have recomputed population figures, as of 1970, by the most accurate means available.

We have sought to avoid a reapportionment which would spawn a labyrinthian missmash of legislative districts, composed of hundreds of Balkanized areas scattered profusely throughout the State. We have sought to avoid reducing the legislative elective process to a hope-

less jungle, impairing the meaningful nature of the representational function. This has necessitated greater variances in population percentages in some instances than ordinarily would have been preferred.

Of course, we realize the whole job will be to do over again in light of the 1980 figures and the Court hopes that the reapportionment we are now ordering will provide the foundation for smaller variations when the new figures are known.

THE PLANS

The plaintiffs have proposed two reapportionment plans. One is known as the Valinsky Plan. It has been of no practical use because it is constructed chiefly on population data found in Census Enumeration Districts. These Census Districts do not conform to voting precinct or beat boundaries. Their use would require a massive realignment of voting precincts throughout the State, with consequent re-registration of voters. The Court thinks it should adopt an alternative which would avoid this wholesale confusion, to say nothing of the problem of getting the voters to register anew in the appropriate precinct.

On the other hand, we have adopted portions of the Kirksey Plan because, in the opinion of the Court, they fit the situation better than any others. We have not adopted the Kirksey Plan *in toto* because its efforts to attain mathematical nicety would irreparably rend the basic fabric of state government in Mississippi.

The plans we now formulate will conform as nearly as possible to the basic concepts of one man-one vote without, at the same time, setting up a variable Babel of ill defined legislative districts.

THE GUIDELINES

To attain this objective we have developed, and adhere to, the following guidelines:

1. If a county has more than enough population for the election of a Representative or Senator, then there

shall be one complete district within that county, thus at least one Senator or Representative will be chosen solely by that county. In practical effect this will largely preserve the integrity of county boundaries and conform, to a degree, with the state policy on that subject, Mahan v. Howell, *supra*.

2. Except where two or more districts may properly be set up *within* the same county as authorized by Mississippi Constitution, Section 254, no county will be split into more than two segments.

3. Any departure from these guidelines will be allowed to occur in those rare instances required to attain reasonable contiguity, a tolerable equality of population, or an acceptable degree of compactness.

4. There shall be no minimization or cancellation of black voting strength. Any apparent dilution in any particular locality will occur only when dictated by the necessity for drawing district lines so as to adhere as closely as reasonably possible to the population norm while maintaining contiguity and a reasonable degree of compactness.

5. The population variances are to be as near *de minimis* as possible, bearing in mind any existing unusual circumstances and the narrow mathematical restrictions imposed by a single percentage point.

6. Obviously, shifts could be made in some districts to make them more nearly *de minimis* but the bulge here, or the contraction there, cannot overlook the necessity for fitting one set of 52 blocks (Senate seats) and another set of 122 blocks (House seats) within immovable precinct, beat, county, and state boundaries. Nowhere can a "domino" effect be more quickly encountered.

7. The population figures of the 1970 Census will be used as the basis for this reapportionment. This is the only definite data available. Yet, the Court is well aware of the continuing population shifts in Mississippi. The Census Bureau officially estimates that between 1970 and July 1, 1973 (the latter date being now more than three years past), the population of DeSoto County increased 28.9%, both Jackson and Rankin Counties increased 18.1%, and so forth. (See Table for the entire

State attached to this opinion). We cannot use the 1973 official population estimates because they do not include beats and precincts.

IV. *Judgment*

It, therefore, is ORDERED, ADJUDGED, and DECREED:

1. The permanent plans for the reapportionment of the Legislature of the State of Mississippi, as hereinafter set forth, *shall be in force and effect for the regular quadrennial elections of 1979* and thereafter until altered according to law.

2. Except in those instances in which a special election may hereinafter be ordered, these plans shall not affect the terms of office of legislators elected in 1975.

3. In the event of the death or resignation of a legislator presently in office, the vacancy so created shall be filled by a special election in that district promulgated for 1979 in which the legislator shall have resided at the time of such death or resignation.

4. The removal by a legislator of his residence from one place to another within the district for which he was elected in 1975 shall not affect the term of office for which he was elected.

It is further ORDERED, ADJUDGED, and DECREED that the 52 members of the Mississippi State Senate to be chosen in the quadrennial election year of 1979 shall be elected from districts consisting of specified counties, beats, and precincts, as follows:

SENATE DISTRICTS

District Number	Description	Population	Over or under the population norm
1	DeSoto County; Marshall County: Beat 3	40,697	—4.5
2	Lafayette County; Marshall County: Beats 1, 2, 4, and 5	43,396	+1.8

District Number	Description	Population	Over or under the population norm
3	The Counties of Benton, Pontotoc, and Union	43,964	+3.1
4	The Counties of Alcorn and Tippah	43,031	+0.9
5	The Counties of Prentiss and Tishomingo;		
	Itawamba County: Beats 1 and 2	41,811	—1.9
6	Lee County	46,148	+8.2
7	Monroe County;		
	Itawamba County: Beats 3, 4, and 5	44,152	+3.6
8	Lowndes County: less Air Base Precinct	44,312	+4.0
9	The Counties of Chickasaw and Clay;		
	Lowndes County: Air Base Precinct	41,033	—3.7
10	The Counties of Choctaw, Montgomery, and Webster;		
	Calhoun County: Beats 1, 2, 4, and 5	43,215	+1.4
11	The Counties of Panola and Yalobusha;		
	Calhoun County: Beat 3	41,557	—2.5
12	The Counties of Tate and Tunica;		
	Quitman County: Beats 1, 2, 3, and 5	43,171	+1.3
13	Coahoma County;		
	Quitman County: Beat 4	43,562	+2.2
14	Bolivar County: except the Precincts of Shelby and Duncan-Alligator	43,496	+2.0

District Number	Description	Population	Over or under the population norm
15	Sunflower County;		
	Bolivar County: the Precincts of Shelby and Duncan-Alligator	42,960	+0.8
16	Washington County: Beats 1, 3, and 4	42,553	—0.2
17	Humphreys County;		
	Washington County: Beats 2 and 5	42,629	.0
18	Leflore County	42,111	—1.2
19	The Counties of Grenada and Tallahatchie	39,192	—8.1
20	The Counties of Carroll and Leake;		
	Attala County: Beats 1, 2, 3, and 4	42,138	—1.2
21	The Counties of Neshoba and Winston;		
	Attala County: Beat 5	43,122	+1.1
22	The Counties of Noxubee and Oktibbeha	43,040	+1.0
23	Kemper County;		
	Lauderdale County: Beats 1 and 3	39,422	—7.5
24	Clarke County: Beat 4		
	Lauderdale County: Beats 2, 4, and 5	40,858	—4.2
25	The Counties of Jasper and Smith;		
	Clarke County: Beats 1, 2, 3, and 5	41,644	—2.3
26	The Counties of Newton and Scott	40,352	—5.4

District Number	Description	Population	Over or under the population norm
27	Rankin County	43,933	+3.0
28	Madison County;		
	Holmes County: Beats 2 and 3		
	Yazoo County: Beats 2 and 4	45,612	+7.0
29	The Counties of Issaquena and Sharkey;		
	Holmes County: Beats 1, 4, and 5		
	Yazoo County: Beats 1, 3, and 5	46,223	+8.4
30	Warren County	44,981	+5.5
31	Hinds County: Beat 1	42,948	+ .7
32	Hinds County: Beat 2	43,061	+1.0
33	Hinds County: Beat 3	43,199	+1.3
34	Hinds County: Beat 4	43,010	+0.9
35	Hinds County: Beat 5	42,755	+0.3
36	Simpson County;		
	Copiah County: Beats 1, 2, 4, and 5	39,747	—6.8
37	The Counties of Claiborne and Lincoln;		
	Copiah County: Beat 3	41,233	—3.3
38	Jefferson County;		
	Adams County: Beats 1, 2, 4, and 5	39,082	—8.3
39	The Counties of Amite, Franklin, and Wilkinson;		
	Adams County: Beat 3	40,379	—5.3

District Number	Description	Population	Over or under the population norm
40	Pike County;		
	Walthall County: Beats 1, 2, and 3	40,190	—5.5
41	The Counties of Lawrence and Marion;		
	Jefferson Davis County: Beat 2		
	Walthall County: Beats 4 and 5	34,486	—7.4
42	Covington County;		
	Jefferson Davis County: Beats 1, 3, 4, and 5		
	Jones County: Beat 5, and the Precincts of County Barn and Ellisville Courthouse	40,794	—4.3
43	Jones County: Beats 1, 2, 3, and 4, less the Precincts of County Barn and Ellisville Courthouse	40,989	—3.9
44	Forrest County: Beats 1, 2, and 3; the Precincts of Camp School, Dixie Pine, Hawkins Junior High, Rowan High, William Carey, and McCallum	42,339	—0.7
45	The Counties of Lamar and Perry;		
	Forrest County: Beat 5 and the Precincts of County A.H.S. and McLaurin		
	Stone County: Beats 1 and 2	43,024	+0.9
46	The Counties of George, Greene, and Wayne;		
	Stone County: Beats 3, 4, and 5	42,515	—0.3

District Number	Description	Population	Over or under the population norm
47	The Counties of Hancock and Pearl River	45,189	+6.0
48	Harrison County: the City of Gulfport and Precinct 11 in the City of Biloxi	45,208	+6.0
49	Harrison County: all of the City of Biloxi except Precinct 11	44,069	+3.4
50	Harrison County: all that part outside the Cities of Biloxi and Gulfport	45,305	+6.3
51	Jackson County: all that part outside the Cities of Moss Point and Pascagoula plus the Precinct of Bayou Casotte No. 4	44,269	+3.8
52	Jackson County: the City of Moss Point; all of the City of Pascagoula except the Precinct of Bayou Casotte No. 4	43,706	+2.5

That which appears herein shall constitute the findings of fact and conclusions of law in this case as required by Rule 52(a) of the Federal Rules of Civil Procedure and shall also constitute the judgment of the Court as to the reapportionment of the Mississippi State Senate. This, however, is not a final judgment in this case because the House of Representatives must also be reapportioned so as to comply with the Constitution of the United States. The reapportionment of the House of Representatives will be accomplished in a supplemental decree, to be entered as quickly as the Court can devise a satisfactory plan for the reapportionment of the House

of Representatives, continuing jurisdiction of this case being expressly reserved for that purpose.

The parties to this litigation are directed, within fifteen (15) days, to file stipulations with the Court as to those Senatorial Districts in which special elections would be mandated, in their opinion, by the Constitution of the United States.

SO ORDERED, ADJUDGED, and DECREED, this the —— day of August, 1976.

/s/ Jas. P. Coleman
United States Circuit Judge

/s/ Dan M. Russell, Jr.
Chief Judge
United States District Court

/s/ Harold Cox
United States District Judge

APPENDICES

Population Analysis for the 52 Senatorial Districts
1976 Court Ordered Plan

Dist. No.	Counties and Beats	Population County	Population District	Over or Under State Norm of 42,633 Amount	%
1	DeSoto-All	35,885			
	Marshall-Beat 3	4,812	40,697	1,936-	4.5-
2	Lafayette-All	24,181			
	Marshall-Beats 1, 2, 4 & 5	19,215	43,396	763+	1.8+
3	Union-All	19,096			
	Pontotoc-All	17,363			
	Benton-All	7,505	43,964	1,331+	3.1+
4	Alcorn-All	27,179			
	Tippah-All	15,852	43,031	398+	.9+
5	Prentiss-All	20,133			
	Tishomingo-All	14,940			
	Itawamba-Beats 1 & 2	6,738	41,811	822-	1.9-
6	Lee-All	46,148	46,148	3,515+	8.2+
7	Monroe-All	34,043			
	Itawamba-Beats 3, 4 & 5	10,109	44,152	1,519+	3.6+
8	Lowndes County, all except Air Base Precinct	44,312	44,312	1,679+	4.0+
9	Clay-All	18,840			
	Chickasaw-All	16,805			
	Lowndes-Air Base Precinct	5,388	41,033	1,600-	3.7-
10	Choctaw-All	8,440			
	Montgomery-All	12,918			
	Webster-All	10,047			
	Calhoun-Beats 1, 2, 4 & 5	11,810	43,215	582+	1.4+
11	Panola-All	26,829			
	Yalobusha-All	11,915			
	Calhoun-Beat 3	2,813	41,557	1,076-	2.5-
12	Tate-All	18,544			
	Tunica-All	11,854			
	Quitman-Beats 1, 2, 3 & 5	12,773	43,171	538+	1.3+

Dist. No.	Counties and Beats	Population County	Population District	Over or Under State Norm of 42,633 Amount	%
13	Coahoma-All	40,447			
	Quitman-Beat 4	3,115	43,562	929+	2.2+
14	Bolivar-Beats 1, 2, 4 & 5	39,767			
	Beat 3: Mound Bayou Precinct	3,729	43,496	863+	2.0+
15	Sunflower-All	37,047			
	Bolivar-Beat 3: Shelby & Duncan-Alligator Precincts	5,913	42,960	327+	.8+
16	Washington-All of Beats 1, 3 & 4	42,553	42,553	80-	.2-
17	Washington-All of Beats 2 & 5	28,028			
	Humphreys-All	14,601	42,629	4-	.0-
18	Leflore-All	42,111	42,111	522-	1.2-
19	Grenada-All	19,854			
	Tallahatchie-All	19,338	39,192	3,441-	8.1-
20	Leake-All	17,085			
	Attala-Beats 1, 2, 3 & 4	15,656			
	Carroll-All	9,397	42,138	495-	1.2-
21	Neshoba-All	20,802			
	Winston-All	18,406			
	Attala-Beat 5	3,914	43,122	489+	1.1+
22	Oktibbeha-All	28,752			
	Noxubee-All	14,288	43,040	407+	1.0+
23	Lauderdale-Beats 1 & 3	29,189			
	Kemper-All	10,233	39,422	3,211-	7.5-
24	Lauderdale-Beats 2, 4 & 5	37,898			
	Clarke-Beat 4	2,960	40,858	1,775-	4.2-
25	Jasper-All	15,994			
	Smith-All	13,561			
	Clarke-Beats 1, 2, 3 & 5	12,089	41,644	989-	2.3-
26	Scott-All	21,369			
	Newton-All	18,983	40,352	2,281-	5.4-
27	Rankin-All	43,933	43,933	1,300+	3.0+

Dist. No.	Counties and Beats	Population County	Population District	Over or Under State Norm of 42,633 Amount	Over or Under State Norm of 42,633 %
28	Madison-All	29,737			
	Holmes-Beats 2 & 3	10,110			
	Yazoo-Beats 2 & 4	5,765	45,612	2,979+	7.0+
29	Yazoo-Beats 1, 3 & 5	21,539			
	Holmes-Beats 1, 4 & 5	13,010			
	Sharkey-All	8,937			
	Issaquena-All	2,737	46,223	3,590+	8.4+
30	Warren-All	44,981	44,981	2,348+	5.5+
31	Hinds-Beat 1	42,948	42,948	313+	.7+
32	Hinds-Beat 2	43,061	43,061	428+	1.0+
33	Hinds-Beat 3	43,199	43,199	566+	1.3+
34	Hinds-Beat 4	43,010	43,010	377+	.9+
35	Hinds-Beat 5	42,755	42,755	122+	.3+
36	Simpson-All	19,947			
	Copiah-Beats 1, 2, 4 & 5	19,800	39,747	2,886-	6.8-
37	Lincoln-All	26,198			
	Claiborne-All	10,086			
	Copiah-Beat 3	4,949	41,233	1,400-	3.3-
38	Adams-Beats 1, 2, 4 & 5	29,787			
	Jefferson-All	9,295	39,082	3,551-	8.3-
39	Amite-All	13,763			
	Wilkinson-All	11,099			
	Franklin-All	8,011			
	Adams-Beat 3	7,506	40,379	2,254-	5.3-
40	Pike-All	31,756			
	Walthall-Beats 1, 2 & 3	8,534	40,290	2,343-	5.5-
41	Marion-All	22,871			
	Lawrence-All	11,137			
	Walthall-Beats 4 & 5	3,966			
	Jefferson Davis-Beat 2	1,512	39,486	3,147-	7.4-

Dist. No.	Counties and Beats	Population County	Population District	Over or Under State Norm of 42,633 Amount	Over or Under State Norm of 42,633 %
42	Jones-Beat 5 (11,272) plus Ellisville Courthouse & County Barn Precincts in Beat 4 (4,096)	15,368			
	Covington-All	14,002			
	Jefferson Davis-Beats 1, 3, 4 & 5	11,424	40,794	1,839-	4.3-
43	Jones-Beats 1, 2, 3 & 4 less Ellisville Courthouse & County Barn Precincts	40,989	40,989	1,644-	3.9-
44	Forrest-All of Beats 1, 2 & 3 and Camp School, Dixie Pine, Hawkins Junior High, Rowan High, William Carey & McCallum Precincts in Beat 4	42,339	42,339	294-	.7-
45	Forrest-All of Beat 5 and Forrest County A.H.S. and McLaurin Precincts in Beat 4	15,510			
	Lamar-All	15,709			
	Perry-All	9,065			
	Stone-All of Beats 1 & 2	3,240	43,024	391+	.9+
46	Wayne-All	16,650			
	George-All	12,459			
	Greene-All	8,545			
	Stone-All of Beats 3, 4 & 5	4,861	42,515	118-	.3-
47	Pearl River-All	27,802			
	Hancock-All	17,387	45,189	2,556+	6.0+
48	Harrison-City of Gulfport, & Precinct 11 in City of Biloxi	40,791			
		4,417	45,208	2,575+	6.0+
49	Harrison-City of Biloxi: All except that part included in District 48	44,069	44,069	1,436+	3.4+
50	Harrison-All that part lying outside Cities of Biloxi and Gulfport	45,305	45,305	2,672+	6.3+

PLAN FOR THE REAPPORTIONMENT OF THE MISSISSIPPI STATE SENATE - Cont'd
AUGUST 1976

Dist. No.	Counties and Beats	Population County	Population District	Over or Under State Norm of 42,363 Amount	%
51	Jackson-All that part lying outside Cities of Moss Point and Pascagoula plus Bayou Casotte No. 4 Precinct in City of Pascagoula	44,269	44,269	1,636+	3.8+
52	Jackson-The City of Moss Point and the City of Pascagoula, less Bayou Casotte No. 4 Precinct	43,706	43,706	1,073+	2.5+
	TOTALS	2,216,912	2,216,912		

The U.S. Census Bureau does not report population by voting precincts, as it once did. The Court, therefore, has estimated precinct population by factoring the registered voting strength of a precinct against the total population of the Beat in which it is located. Extensive comparison indicates that the precinct population figures thus obtained are substantially accurate.

The Beats in some Counties have been redistricted since 1970. The population figures used for those Beats have generally been taken from the Court orders specifying the population figures.

Three Counties—Hinds, Warren, and Grenada are in the process of having their Beats redistricted. Hinds and Warren are on appeal. As to them we have used the population figures as found by the District Court. Legislative redistricting as to Lowndes County presented a special problem. Beats in Lowndes were redistricted in 1972. There, the District Court found that 4,074 non-residents were enumerated at Columbus Air Force Base in 1970, while 1,670 non-residents were enumerated at Mississippi University for Women. It reapportioned the five Beats on the basis of population of 43,956. We have reapportioned on the basis of the total population enumerated by the Census Bureau (49,700).

RACIAL COMPOSITION OF THE VARIOUS SENATORIAL DISTRICTS

District Number	Black Population	District Number	Black Population
1	38.1%	27	28.1%
2	43.1%	28	62 %
3	20.9%	29	60.8%
4	13.4%	30	40.8%
5	7.4%	31	39 %
6	20.7%	32	54.3%
7	25.5%	33	51.2%
8	26 %	34	28.2%
9	41.5%	35	22.8%
10	31.7%	36	39.7%
11	46 %	37	43.9%
12	57.2%	38	54 %
13	64 %	39	52.7%
14	58.9%	40	42.6%
15	65.1%	41	33.8%
16	57 %	42	28.3%
17	57 %	43	30.8%
18	57.9%	44	No figures
19	51.9%	45	No figures
20	42.2%	46	24 %
21	28.4%	47	16.7%
22	45.1%	48	23.6%
23	29.4%	49	18.5%
24	37.7%	50	8.7%
25	35.9%	51	12.3%
26	30.3%	52	20.1%

Mississippi Population Changes, By County, Since the Census of 1970 (U. S. Census Official Estimate)

COUNTY		COUNTY	
Adams	+ 0.9	Leflore	— 1.5
Alcorn	+ 3.7	Lincoln	+ 2.7
Amite	— 4.8	Lowndes	+ 7.6
Attala	+ 0.3	Madison	+ 7.3
Benton	— 1.3	Marion	+ 2.8
Bolivar	+ 0.1	Marshall	+11.4
Calhoun	+ 3.0	Monroe	+ 2.3
Carroll	— 0.4	Montgomery	+ 2.5
Chickasaw	+ 2.4	Neshoba	+ 4.2
Choctaw	+ 0.7	Newton	+ 2.6
Claiborne	+ 0.3	Noxubee	— 4.1
Clarke	+ 2.4	Oktibbeha	+ 6.9
Clay	+ 1.6	Panola	+ 2.4
Coahoma	— 4.2	Pearl River	— 0.1
Copiah	+ 4.5	Perry	+ 3.4
Covington	+ 2.7	Pike	+ 4.6
DeSoto	+28.9	Pontotoc	+ 5.6
Forrest	+ 6.9	Prentiss	+ 2.8
Franklin	— 0.3	Quitman	— 4.4
George	+ 6.1	Rankin	+18.1
Greene	— 0.4	Scott	+ 4.3
Grenada	+ 1.0	Sharkey	— 3.7
Hancock	+ 5.5	Simpson	+ 4.3
Harrison	+ 8.3	Smith	+ 6.2
Hinds	+ 3.8	Stone	+ 5.4
Holmes	— 2.7	Sunflower	— 0.7
Humphreys	— 3.4	Tallahatchie	— 3.8
Issaquena	—12.2	Tate	+ 9.6
Itawamba	+ 5.6	Tippah	+ 8.9
Jackson	+18.1	Tishomingo	+ 6.3
Jasper	+ 0.8	Tunica	— 5.4
Jefferson	— 5.3	Union	+ 6.7
Jefferson Davis	— 0.1	Walthall	— 0.8
Jones	+ 0.7	Warren	+ 2.4
Kemper	— 0.6	Washington	+ 0.8
Lafayette	+11.1	Wayne	+ 1.9
Lamar	+11.3	Webster	+ 0.9
Lauderdale	+ 6.3	Wilkinson	— 3.5
Lawrence	+ 2.6	Winston	+ 3.1
Leake	+ 2.3	Yalobusha	+ 4.0
Lee	+ 5.9	Yazoo	— 3.0

IN THE
UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

Civil Action No. 3830(A)

[Filed Sep. 8, 1976]

PEGGY J. CONNOR, ET AL., PLAINTIFFS,

v.

CLIFF FINCH, ET AL., DEFENDANTS,

AND

UNITED STATES OF AMERICA, PLAINTIFF-INTERVENOR.

Before COLEMAN, Circuit Judge, RUSSELL and COX, District Judges.

PER CURIAM:

Continuing our difficult journey toward a valid reapportionment of the Mississippi Legislature, we now apportion the State of Mississippi into 122 single member districts for the election of members of the State House of Representatives. Our partial decree of August 24, 1976 apportioning the State Senate, including its findings of fact and conclusions of law, is incorporated in and made a part of this decree.

In constructing a system of single member legislative districts, this Court is compelled to ignore the requirements of the Mississippi Constitution that each County shall have one Representative. We are compelled to abandon two 159 year old state policies: (1) multi-member legislative districts and (2) never fracturing county boundaries in the composition of legislative districts. In short, by the erection of single member legislative districts we have revolutionized Mississippi's system of legislative elections. On the other hand, we have striven to preserve county identity as far as reasonably possible, which *Mahan* v. *Howell* holds to be a legitimate objective. The *spirit*, if not the letter, of the policy behind the preservation of county boundaries and the integrity of counties as the basic unit of state government has been largely preserved. The basic fabric of Mississippi government has not been materially harmed. This has caused, or rendered unavoidable, the population variations appearing between and among the respective legislative districts. Once the voting public becomes familiar with the new system (which will take time) the best interests of the State will be promoted by single member districts. Using the foundation here established for the first time, when the results of the 1980 census are known, legislative districts may be revised with less population variances and with a negligible impact on the legislative electoral process.

Mississippi has not been allowed to elect a legislature under rules of its own making since 1963. Three quadrennial legislative elections have been held under reapportionments constructed by this Court; yet, for various reasons, none of the Court-ordered plans has ever reached a decision on the merits in the Supreme Court. The most recent effort of the Legislature to reapportion itself foundered upon objections from the Attorney General of the United States. As the Supreme Court indicated in its opinion of May 19, 1976, the time has come to put an end to this litigation. Prior experience teaches that nothing short of the course we have adopted has any real hope of ending it.

In Reynolds v. Sims, 377 U.S. at 577, the Supreme Court said that "the Equal Protection Clause requires that a state make an honest and a good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable."

Consistently with the considerations advanced in our opinion of August 24, 1976, this Court has done all it can do in the way of an honest, good faith effort.

In *Reynolds* v. *Sims*, *supra*, the Supreme Court also said:

"A State may legitimately desire to maintain the integrity of various political subdivisions, insofar as possible, and provide for compact districts of contiguous territory in designing a legislative apportionment scheme. Valid considerations may underlie such aims. Indiscriminate districting, without any regard for political subdivision or natural or historical boundary lines, may be little more than an open invitation to partisan gerrymandering." *Mahan* v. *Howell* confirmed this principle.

In the formulation of our Court-ordered plan, literally hundreds of boundary possibilities have been considered in an effort to achieve population norms but there has been no gerrymandering.

DECREE

It is Ordered, Adjudged and Decreed that for the regular quadrennial elections of 1979, and thereafter until changed according to law, the 122 members of the Mississippi House of Representatives shall be elected from 122 districts, as follows, to-wit:

District Number	Description	Population	Percentage over or under the population norm
1	DeSoto County: Beat 3, Beat 4, and the Precinct of Hernando East	17,802	—2.0
2	DeSoto County: Beat 1, Beat 2, and the Precincts of Alphaba, Lewisburg West, Love, Nesbit East, and Pleasant Hill	18,083	—0.5
3	Marshall County: Beats 1, 2, 3, and 4	19,226	+5.8
4	Benton County; Marshall County: Beat 5; Lafayette County: Beats 2 and 3	19,235	+5.9
5	Tippah County; Prentiss County: Beat 2	19,879	+9.4

District Number	Description	Population	Percentage over or under the population norm
6	Alcorn County: Beat 1, Beat 4, Beat 5, and the Precincts of Biggersville and Rienzi	19,377	+6.6
7	Tishomingo County: Beats 1, 2, 3, and 4 Alcorn County: Beat 2, and the Precinct of South Corinth	19,754	+8.7
8	Tunica County: Beats 1, 2, 3, and 4, plus the Armory Precinct; Coahoma County: The Precincts of Coahoma, Jonestown, Lula, and Mattson	16,635	—8.5
9	Tate County;	18,544	+2.1
10	Panola County: Beats 1, 2, and 5	19,137	+5.3
11	Panola County: Beats 3 and 4; Yalobusha County: Beats 1, 2, 3, and 4	17,302	—4.8
12	Lafayette County: Beats 1, 4, and 5	17,252	—5.1
13	Union County;	19,096	+5.1
14	Prentiss County: Beats 1, 3, 4, and 5; Tishomingo County: Beat 5	19,094	+5.1
15	Coahoma County: Beat 2; Lyon Precinct in Beat 1; Clarksdale, Rena Lara, and Bobo Precincts in Beat 5	17,303	—4.8
16	Coahoma County: Beat 4; All Clarksdale Precincts in Beats 1 and 3; Roundaway Precinct in Beat 5	17,017	—6.4

District Number	Description	Population	Percentage over or under the population norm
17	Quitman County; Tunica County: The Precinct of Two Mile Lake	17,234	—5.2
18	Pontotoc County;	17,363	—4.4
19	Lee County: Beat 1, Beat 2, and Belden Precinct	19,411	+6.8
20	Lee County: The Precincts of Auburn, Bissell, East Heights North, East Heights South, Eggville, Gilvo, Mooreville, Old Union, Palmetto, Tupelo III, Tupelo IV, Tupelo V, and Verona	19,058	+4.9
21	Itawamba County; Lee County: The Precincts of Petersburg, Plantersville, and Richmond	19,146	+5.4
22	Bolivar County: Beat 1, and the Precincts of Pace, Longshot, Shaw, Skene, and Stringtown; Sunflower County: The Precinct of Boyer-Linn	16,687	—8.2
23	Bolivar County: The Precincts of Central Cleveland, East Central Cleveland, East Cleveland, West Cleveland, and Boyle	17,037	—6.2
24	Bolivar County: Beat 3, and the Precincts of North Cleveland and Merigold	16,912	—6.9
25	Sunflower County: Beat 1, Beat 3, and the Precinct of Moorhead	17,605	—3.1

District Number	Description	Population	Percentage over or under the population norm
26	Sunflower County: Beat 5; Sunflower and Indianola Precincts in Beat 2; Dockery, Doddsville, and Ruleville Precincts in Beat 4	18,215	+0.2
27	Tallahatchie County: Beats 1, 2, 4, and 5, and the Precinct of Paynes	17,487	—3.8
28	Calhoun County; Yalobusha County: Beat 5	16,928	—6.8
29	Chickasaw County; Lee County: The Precincts of Pleasant Grove and Shannon	19,001	+4.6
30	Monroe County: Beat 4, and the Precincts of Aberdeen III, Lackey, Central Grove, Boyd's (Pine Grove), Nettleton, Willis, and Wren Lee County: The Precincts of Brewer, Kedron, and Nettleton	18,251	+0.4
31	Monroe County: Beat 1, Beat 2, and the Precincts of Amory V, Bartahatchie, Bigbee, Gattman, Grubb Springs, and Hamilton	18,976	+4.4
32	Issaquena County; Washington County: Beat 1, and the Precinct of Avon	18,205	+0.2
33	Washington County: The Precincts of Ward Center, Community Center, Arcola, and Hollandale	17,409	—4.2
34	Washington County: Beat 3, and the Precinct of New County Garage	19,472	+7.2

District Number	Description	Population	Percentage over or under the population norm
35	Washington County: The Precincts of Darlove, Bourbon, County Recreation Center, Industrial College, Leland Health Clinic, and Leland Light Plant	18,232	+0.3
36	Leflore County: Beat 1, Beat 3, and the Precinct of Money	18,111	—0.3
37	Leflore County: Beats 4 and 5	16,765	—7.7
38	Carroll County; Leflore County: The Precincts of Northeast Greenwood and East Greenwood Attala County: Beat 3, less Possumneck Precinct	17,543	—3.5
39	Grenada County: Beats 1, 3, 4, and 5; Tallahatchie County: Beat 3, less Paynes Precinct	17,732	—2.4
40	Montgomery County; Grenada County: Beat 2	16,891	—7.0
41	The Counties of Choctaw and Webster;	18,487	+1.7
42	Clay County;	18,840	+3.7
43	Oktibbeha County: Beats 1, 3, 4, and the Precinct of Hickory Grove	18,981	+4.5
44	Oktibbeha County: Beat 5, and the Precincts of Northeast Starkville, and Osborn; Lowndes County: The Precincts of Mayhew, West Lowndes, Barrow, and University	18,721	+3.0

District Number	Description	Population	Percentage over or under the population norm
45	Lowndes County: The Precincts of Air Base, Caledonia, Rural Hill, New Hope, Fairview, and Coleman	18,641	+2.3
46	Lowndes County: The Precincts of Brandon, Lee High, Stokes-Beard, Sale, Franklin, Caldwell, and Hunt	18,162	—0.0
47	Sharkey County; Humphreys County: Beat 5; Yazoo County: The Precincts of Carter, Lake City, Zion, Eden, Free Run, East Midway, West Midway, Harttown, Enola, Fairview, and Holly Bluff	16,521	—9.1
48	Humphreys County: Beats 1, 2, 3, and 4; Holmes County: The Precincts of Coxburg, Tchula, and Thornton	17,406	—4.2
49	Holmes County: Entire County, less the Precincts of Coxburg, Tchula, and Thornton	17,602	—3.1
50	Attala County: Beats 1, 2, 4, 5, and the Precinct of Possumneck	18,659	+2.7
51	Winston County;	18,406	+1.3
52	Noxubee County; Lowndes County: The Precincts of Crawford and Artesia	18,235	+0.4
53	Warren County: The Precincts of Beechwood, Jett, Redbone, Yokena, Goodrum, and Tingle	16,703	—8.1

District Number	Description	Population	Percentage over or under the population norm
54	Warren County: The Precincts of Cedar Grove, St. Aloysius, Auditorium, Central Fire, American Legion, Fire Station No. 7, and Jonestown	16,793	—7.6
55	Warren County: The Precincts of Kings, Oak Ridge, Walters, Brunswick, Redwood, Bovina, and Culkin; (Warren County reapportionment by Beats is on appeal to the Supreme Court). Yazoo County: The Precincts of Dover, East Bentonia, West Bentonia, Mechanicsburg, Phoenix, Satartia, Fugate, Deasonville, and Valley	17,006	—6.4
56	Yazoo County: The Precincts of Benton, Center Ridge, Robinette, East Courthouse, West Courthouse, South City Hall, North City Hall, West Lintonia, and East Lintonia (Yazoo County is in the process of reapportionment by Beats; hence we use Precincts).	16,912	—6.9
57	Madison County: Beats 1, 4, and 5	19,853	+9.3
58	Leake County; Neshoba County: The Precincts of Hays, Turner, Dixon, and Groves	19,012	+4.6
59	Neshoba County: The entire County, less the Precincts of Hays, Turner, Dixon, and Groves	18,875	+3.9

District Number	Description	Population	Percentage over or under the population norm
60	Kemper County; Lauderdale County: All Precincts in Beats 1 and 2 outside the City of Meridian; The Precincts of Center Hill, Obadiah, and Shucktown in Beat 3	19,342	+6.4
61	Hinds County: Precincts 17, 35-38, 42-45, Twin Pines		
62	Hinds County: Precincts 27, 29, 39-41, 79-83, Liberty Grove		
63	Hinds County: Precincts 1, 5, 6, 8, 9, 14-16, 32-34		
64	Hinds County: Precincts 12, 13, 21-23, 28, 30		
65	Hinds County: Precincts 2, 4, 10, 11, 18, 19, 50		
66	Hinds County: Precincts 20, 31, 52, 55-57, 61		
67	Hinds County: Precincts 47, 51, 53, 58, 63, 64, 66		
68	Hinds County: Precincts 24-26, 54, 59, 60, 62, 67-69		
69	Hinds County: Precincts 49, 70-77		
70	Hinds County: Precincts of Bolton, Brownsville, Clinton 1, Clinton 2, Clinton 3, Clinton 4, Cynthia, Flag Chapel, North Clinton, Pocahontas, Presidential Hills, Tinnin		

District Number	Description	Population	Percentage over or under the population norm
71	Hinds County: Precincts of Cayuga, Edwards, Fairfax, Hickory, Learned, Midway, Raymond 1, Raymond 2, Van Winkle 1, Van Winkle 2		
72	Hinds County: Precincts of Briarcliff, Byram, Chapel Hill, Dry Grove, Forest Hill, Old Byram, Red Hill, Terry, Utica 1, Utica 2, Woodville Heights The single member district plan ordered into effect by this 3-Judge Court for Hinds County in 1975 resulted in the election of three black Representatives, where none had been elected before. We leave these Districts unchanged.		
73	Rankin County: Beat 2; Madison County: Beats 2 and 3	18,731	+3.1
74	Rankin County: Beats 4 and 5	17,624	—3.0
75	Rankin County: Beats 1 and 3	17,462	—3.9
76	Scott County: Beats 1, 2, 4, and 5	17,087	—6.0
77	Newton County;	18,983	+4.5
78	Lauderdale County: Meridian City Precincts 1, 2, 3, 4, 7, and 8, and the County Precinct of School Gap	19,143	+5.3
79	Lauderdale County: Meridian City Precincts 5, 6, 9, 13, 14, 15, 16, 17, and 18, and the Precinct of East Bonita	19,266	+6.0

District Number	Description	Population	Percentage over or under the population norm
80	Lauderdale County: All Precincts in Beat 3 outside the City of Meridian except Obadiah, Shucktown, Center Hill, and School Gap; All Precincts in Beat 4 except Meridian Precinct No. 13; All Precincts in Beat 5 outside the City of Meridian except East Bonita	19,569	+7.7
81	The Counties of Claiborne and Jefferson;	19,381	+6.7
82	Copiah County: Beat 1, Beat 4, Beat 5, and the Precincts of East Hazelhurst, West Hazelhurst, Barlow, Glancy, and Allen	18,972	+4.4
83	Lawrence County; Copiah County: Beat 2 and the Precincts of Ainsworth and Martinsville West; Simpson County: The Precincts of Bridgeport, Pinola, and Shivers	18,647	+2.6
84	Simpson County: Beat 1, Beat 2, Beat 3, Beat 5; the Precincts of Magee North and Magee South	18,214	+0.2
85	Smith County; Scott County: Beat 2	17,843	—1.8
86	Jasper County: Beats 1, 3, 4, and 5; Jones County: The Precincts of Gitano, Matthews, and Shady Grove	17,408	—4.2

District Number	Description	Population	Percentage over or under the population norm
87	Clarke County;		
	Jasper County: Beat 2	16,701	—8.1
88	Adams County: Beats 1 and 2, and the Precincts of Liberty Park, Concord, and Palestine	19,109	+5.2
89	Adams County: Beats 4 and 5, and the Precinct of Somerset	18,184	+0.1
90	Franklin County;		
	Lincoln County: Beat 4, and the Precincts of Caseyville, Loyd Star, Old Red Star, Vaughn, and Zetus	16,966	—6.6
91	Lincoln County: Beat 1, Beat 2, Beat 3, and the Precinct of Northwest Brookhaven	17,243	+5.1
92	Jefferson Davis County: Beats 1, 3, 4, and 5;		
	Covington County: Beat 3, Beat 4, Beat 5, and the Precincts of South Collins and Eminence	19,825	+9.1
93	Jones County: Beat 2, and the Precincts of West Jones, Mason School, 26th Street Fire Station, and Lamar School	17,470	—3.9
94	Jones County: Beat 3, and the Precincts of Sharon, Sandersville, City Barn, Maddox School, Stone Deavours School	18,439	+1.5
95	Jones County: Beat 4, and the Precincts of Moselle, Pendorf, Pine Grove, Rainey, South Jones, and Shelton	17,382	—4.3

District Number	Description	Population	Percentage over or under the population norm
96	Wayne County;	16,650	—8.4
97	Wilkinson County;		
	Amite County: Beats 1, 2, and 3	19,354	+6.5
98	Pike County: Beats 1 and 5;		
	Amite County: Beats 4 and 5	18,211	—0.2
99	Pike County: Beats 2, 3, and 4	19,053	+4.9
100	Walthall County;		
	Jefferson Davis County: Beat 2;		
	Marion County: The Precincts of Goss, Morgantown, White Bluff, Stovall, and Kokomo	18,371	+1.1
101	Marion County: Entire County except the Precincts of Goss, Morgantown, White Bluff, Stovall, and Kokomo	19,587	+7.8
102	Lamar County;		
	Covington County: Beat 1, and the Precincts of Richmond and Sanford	19,735	+8.6
103	Forrest County: The Precincts of Lillie Burney, Woodley School, Jones School, Petal High, East Bowie, Petal-Harvey, Camp School, and Hawkins Junior High	17,504	—3.7
104	Forrest County: The Precincts of Blair High, Eatonville, Glendale, Petal-Leeville, Rawls Springs, Macedonia, Davis School, Grace Christian and Pinecrest	17,555	—3.4

District Number	Description	Population	Percentage over or under the population norm
105	Forrest County: The Precincts of Central School, Dixie School, Westside, Eaton School, Sunrise, Walthall, Dixie Pine, Rowan High, William Carey, and Thomas	17,799	—2.0
106	Forrest County: The Precincts of Forrest County A.H.S., McCallum, McLaurin, Brooklyn, Carnes, and Maxie; Pearl River County: The Precincts of Poplarville East, Poplarville West, Byrd Line, Hickory Grove, Gum Pond, Wolf River, Oak Hill, Hillsdale, Fords Creek, Buck Branch, White Sand, Mill Creek, Derby, Progress, Silver Run, Steep Hollow, Savannah, McNeill, and Caesar; Stone County: Beat 2	17,377	—4.4
107	The Counties of Greene and Perry;	17,610	—3.1
108	Pearl River County: Beat 4, and the Precincts of Picayune I, II, III, and V; the Precincts of Ozone, Carriere, and Salem	17,036	—6.2
109	George County; Stone County: Beats 1, 3, 4, and 5	18,940	+4.2
110	Hancock County;	17,387	—4.3
111	Harrison County: The Precincts of Biloxi Nos. 1-4, D'Iberville, North Bay, and White Plains	19,217	+5.8

District Number	Description	Population	Percentage over or under the population norm
112	Harrison County: The Precincts of Biloxi Nos. 5-7, 7A-8, Holly Hills, and Howard Creek	19,086	+5.0
113	Harrison County: The Precincts of Stonewall, West Handsboro, Biloxi Nos. 9-11, and East Handsboro	19,139	+5.3
114	Harrison County: The Precincts of Gulfport Nos. 7 and 12, New Hope, E & W Saucier, Gulfport No. 11, Advance, East Lyman, East Orange Grove, Peace, and Poplar Head	19,324	+6.3
115	Harrison County: The Precincts of Gulfport Nos. 4, 5, 6, 8, and 9, East and West Mississippi City, and East and West North Gulfport	19,380	+6.7
116	Harrison County: The Precincts of Gulfport Nos. 13 and 14, Gulfport Nos. 2, 3, and 10, outside Long Beach, West Orange Grove, West Lyman, and Lizana	19,020	+4.7
117	Harrison County: The Precincts of Gulfport No. 1, East Pass Christian, West Pass Christian, East Long Beach, West Long Beach, Pineville, Delisle, Ladner, Vidalia, and Riceville	19,416	+6.9
118	Jackson County: Beat 1	17,595	—3.2
119	Jackson County: Beat 2	17,595	—3.2
120	Jackson County: Beat 3	17,595	—3.2
121	Jackson County: Beat 4	17,595	—3.2

District Number	Description	Population	Percentage over or under the population norm
122	Jackson County: Beat 5	17,595	—3.2
	(The County has been reapportioned by Federal Court Order, with practically equal population in each Beat).		
	Total Population assigned to the 122 Districts		2,216,912
	Total Population of the State, 1970 Census		2,216,912

Explanatory Notes

The special problems and unusual circumstances involved in dismantling a 159 year old system of legislative elections in Mississippi, and constructing an entirely new system of single member districts, were described in our opinion of August 24, 1976, redistricting the State for the election of 52 Senators. We need not repeat them with reference to the House of Representatives, except to emphasize that the exceedingly low 1% population norm of 181 persons has made our task with reference to 122 House members far more difficult.

We are aware that in Chapman v. Meier, 96 S.Ct. at 764, with reference to court-ordered plans the Supreme Court held that a maximum deviation of 20% is

> "impermissible in the absence of significant state policies or other considerations that require adoption of a plan with so great a variance. The burden is on the District Court to elucidate the reasons necessitating any departure from the goal of population equality, and to articulate clearly the relationship between the variance and the state policy furthered".

This Court makes no effort to conceal its unhappiness that in this 122 seat reapportionment District 5 is 9.4% over the norm, District 57 is 9.3% over the norm, and District 92 is 9.1% above the norm. District 47 is 9.1% below the norm. Thus, there is an aggregate deviation

of 18.5%. Even so, 74 districts vary no more than 5% either way.

Districts 5 and 92 are in the heavily populated white area of Northeast Mississippi. Tippah County is 16% black. Prentiss County is 11% black. The Districts are surrounded by Districts also above the norm. A shift of a few dangling precincts, of uncertain population, to achieve a smaller variation would have no impact on the personal identity or political principles of the Representatives chosen from these Districts. On the other hand, considering Mississippi's system of counties, beats, precincts, and permanent voter registration such shifts would complicate the legislative electoral process in this area, with no added benefit to the effectiveness of the individual vote.

District 47 is situated in a solidly black area (black population percentages 68%, 64%, and 53%). It is in the Delta, cut up by numerous bayous, lakes and a major river. It is surrounded by Districts already below the norm.

District 57 is wholly within Madison County (62.3% black), which has not been reapportioned under the one man-one vote rule. When this occurs this District will have approximately 17,841 people, or 1.2% below the norm.

District 92 is composed of parts of two small counties, adjacent to the County of Jones, which alone has enough population for 3 Representatives. Diligent search for a viable percentage reduction here has been fruitless.

Black Population Majority Districts
in this Court Ordered Reapportionment of
the Mississippi House of Representatives

District 3	Marshall County is 61.9% black.
Districts 8, 15, and 16	Tunica County is 72.6% black; Coahoma County is 64.3% black.
District 10	Panola County is 51.2% black.

District 17	Quitman County is 57.4% black; Tunica County is 72.6% black.
Districts 22, 23, 24, 25, and 26	Bolivar County is 61.4% black; Sunflower County is 62.7% black.
District 27	Tallahatchie County is 60.1% black.
Districts 32, 33, 34, and 35	Issaquena County is 62% black; Washington County is 54.4% black.
Districts 36 and 37	Leflore County is 57.8% black.
District 38	Carroll County is 50.7% black, Leflore County is 57.8% black, Beat 3 of Attala County is 25% black.
Districts 47, 48, 49, and 56	Sharkey and Humphrey Counties are 64% black, Holmes County is 68% black, and Yazoo County is 53% black.
District 52	Noxubee County is 65% black; the precincts of Artesia and Crawford are preponderantly black.
District 57	Madison County is 62.3% black.
Districts 61-72 Hinds County	Elected three black Representatives in 1975.
District 81	Claiborne County is 74.5% black; Jefferson County is 75.2% black.
District 97	Wilkinson County is 67% black; Amite County is 50.4% black.

Thirty Districts have black population majorities.

Kemper County, black population 54%, is the only black majority county wholly attached to a white majority county area to form a district. It has only 10,233 people, 56% of the required population norm for a House Seat.

Special Elections

In the Order of June 25, 1975, we stated that when a permanent plan for the reapportionment of the Mississippi Legislature "shall have been accomplished, special elections may be ordered in those legislative districts where required by law, equity, or the Constitution of the United States".

In our Order of July 8, 1975, dealing with the temporary plan for elections in that year, we said:

> "We have determined that no irreparable injury will occur by allowing the 1975 legislative elections to proceed under a temporary plan on the dates provided by law. If the permanent plan, later to be adopted manifests that the temporary plan has caused such an [irreparable] injury the same shall be corrected by special elections as provided by Mississippi law."

As in our partial decree of August 24, 1976, with reference to the Mississippi State Senate, we now direct the parties within fifteen (15) days to file a list of the districts for the election of Representatives in which special elections should be held, if there are any such districts, assigning their reasons as to each district individually.

Upon the receipt of this information, the Court will rule thereon as quickly as reasonably possible. Should special elections be ordered in any district, the same will be held only after fully adequate notice and in time for the person elected to take his seat when the Legislature is convened in regular session in January, 1977.

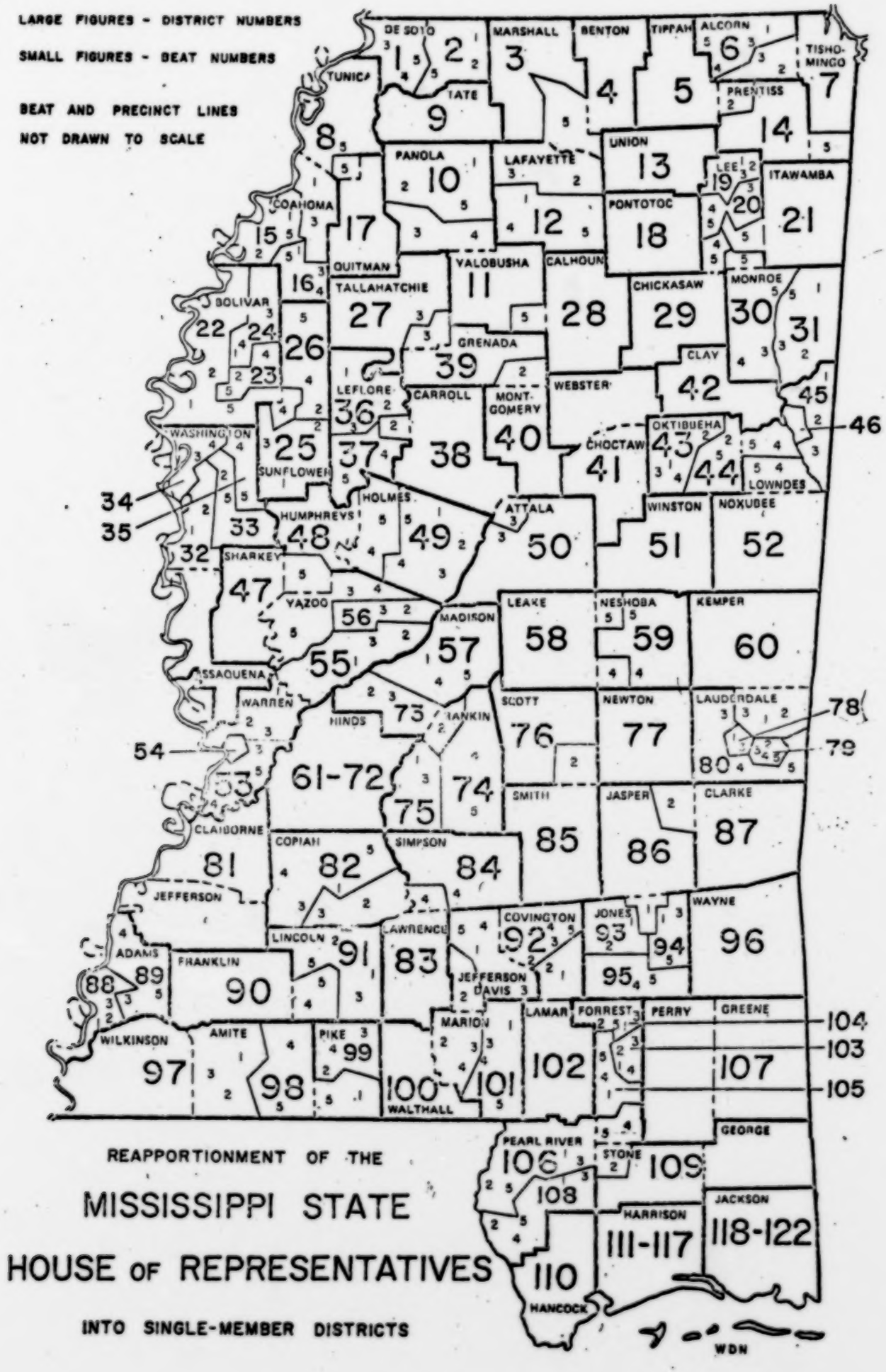
This is not a final decree. The final decree, incorporating all decrees, will be entered when the Court disposes with the matter of special elections.

SO ORDERED, ADJUDGED, and DECREED, this the 8 day of September, 1976.

/s/ James P. Coleman
United States Circuit Judge

/s/ Dan M. Russell, Jr.
Chief Judge, United States
District Court

/s/ Harold Cox
United States District Judge


LARGE FIGURES - DISTRICT NUMBERS
SMALL FIGURES - BEAT NUMBERS
BEAT AND PRECINCT LINES
NOT DRAWN TO SCALE
DE SOTO
MARSHALL
BENTON
TIPPAH
ALCORN
TISHOMINGO
TUNICA
TATE
PRENTISS
UNION
PANOLA
LAFAYETTE
LEE
ITAWAMBA
COAHOMA
PONTOTOC
QUITMAN
YALOBUSHA
CALHOUN
CHICKASAW
MONROE
BOLIVAR
TALLAHATCHIE
GRENADA
CLAY
LEFLORE
CARROLL
MONTGOMERY
WEBSTER
OKTIBBEHA
WASHINGTON
CHOCTAW
SUNFLOWER
HOLMES
ATTALA
WINSTON
NOXUBEE
LOWNDES
HUMPHREYS
SHARKEY
YAZOO
MADISON
LEAKE
NESHOBA
KEMPER
ISSAQUENA
WARREN
HINDS
RANKIN
SCOTT
NEWTON
LAUDERDALE
CLAIBORNE
COPIAH
SIMPSON
SMITH
JASPER
CLARKE
JEFFERSON
LINCOLN
LAWRENCE
COVINGTON
JONES
WAYNE
ADAMS
FRANKLIN
JEFFERSON DAVIS
MARION
LAMAR
FORREST
PERRY
GREENE
WILKINSON
AMITE
PIKE
WALTHALL
PEARL RIVER
STONE
GEORGE
HARRISON
JACKSON
HANCOCK
WDN
REAPPORTIONMENT OF THE
MISSISSIPPI STATE
HOUSE OF REPRESENTATIVES
INTO SINGLE-MEMBER DISTRICTS

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI JACKSON DIVISION

Civil Action No. 3830(A)

[Filed Sept. 8, 1976]

[Caption Omitted]

MOTION FOR SPECIAL ELECTION RELIEF

Plaintiffs, by their attorneys, pursuant to this Court's Judgment of August 24, 1976, move the Court for an order:

1. Shortening the terms of office of state senators elected under the 1975 temporary court-ordered plan in the following Senate districts under that plan: Districts 9, 10, 11, 12, 15, 24, 25, 27, 27A, and 27B.

2. Requiring special senatorial elections to coincide with the November 2, 1976, general election, or to be held at the earliest practicable date thereafter and no later than January 1, 1977, in the following districts established by this Court's Judgment of August 24, 1976:

District	Description	% Black (Court Figures)
12	Tate; Tunica; and Quitman, Beats 1, 2, 3, and 5	57.2%
13	Coahoma; Quitman, Beat 4	64.0%
14	Bolivar, Beats 1, 2, 4, and 5, Mound Bayou Precinct	58.9%
15	Sunflower; Bolivar, Shelby and Duncan-Alligator Precincts	65.1%
16	Washington, Beats 1, 3 and 4	57%
17	Washington, Beats 2 and 5; Humphreys	57%
28	Madison; Holmes, Beats 2 and 3; Yazoo, Beats 2 and 4	62%

District	Description	% Black (Court Figures)
29	Yazoo, Beats 1, 3, and 5; Holmes, Beats 1, 4, and 5; Sharkey; Issaquena	60.8%
38	Adams, Beats, 1, 2, 4, and 5; Jefferson	54%
39	Amite; Wilkinson; Franklin; Adams, Beat 3	52.7%
41	Marion; Lawrence; Walthall, Beats 4 and 5; Jefferson Davis, Beat 2	NA
42	Jones, Beat 5 plus Ellisville C. H. and County Barn Precincts; Jefferson Davis, Beats 1, 3, 4, and 5; Covington	NA
43	Jones, Beats 1, 2, 3, and 4 (minus Ellisville C. H. and County Barn Precincts)	NA

3. Provide that those elected in the special elections take office 30 days after the special election, or in any event prior to the 1977 regular session of the Mississippi Legislature.

In support of their motion, plaintiffs would show to the Court as follows:

1. In its Judgment of August 24, 1976, this Court directed the parties within 15 days to file "stipulations" with the Court regarding districts in which special elections would be mandated. Counsel for the plaintiffs have contacted counsel for the defendants and counsel for the United States in this regard. Counsel for the plaintiffs, Hon. A. F. Summer, informed us that defendants could not stipulate to special elections in any new senatorial district. Plaintiffs' list of special election senatorial districts is similar, in some regards, to the list to be submitted by the United States.

2. The 1975 temporary court-ordered plan failed to meet constitutional requirements because it employed large, multi-member districts which diluted black voting strength and which were disadvantageous to the voters,

and contained excessive and unconstitutional deviations from population equality which diluted the voting strength of voters statewide.

3. To cure the defects of the prior plan, plaintiffs seek special elections in all senatorial districts under the new, permanent plan promulgated by the Court: (1) which are, according to the statistics provided by the Court, black majority in population, and which represent a change from the previous plan, to cure the dilution of black voting strength present in the prior plan, and (2) which are created out of the previous multi-member floterial district (old Districts 27, 27A, and 27B, Jones, Covington, Jefferson Davis, Lawrence, and Marion Counties) to cure the excessive deviation from population equality in that district (-10.708%).

WHEREFORE, plaintiffs pray that their motion be granted.

Respectfully submitted,

/s/ Frank R. Parker
FRANK R. PARKER
Lawyers' Committee for Civil Rights Under Law
233 North Farish Street
Jackson, Mississippi 39201

Attorney for Plaintiffs

[Certificate of Service Omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI JACKSON DIVISION

Civil Action No. 3830(A)
[Filed Sept. 16, 1976]

[Caption Omitted]

PROPOSAL BY THE UNITED STATES FOR SPECIAL ELECTIONS

In its Order of August 24, 1976, this Court set forth a permanent apportionment plan for the Mississippi State Senate and directed the parties to this litigation:

> ". . . to file stipulations with the Court as to those Senatorial Districts in which special elections would be mandated, in their opinion, by the Constitution of the United States."

Without necessarily agreeing with all of the districts set forth in the Court's ordered plan, as to which our analysis is continuing and with respect to which we may wish to file our views concerning the sufficiency of the plan as a permanent plan for the 1979 elections, the United States hereby submits its proposal for special elections under the plan as drawn.

The attached chart sets forth the districts in which special elections are proposed, indicating the number of the district set forth in the Court's Order of August 24, 1976, and the corresponding district number under the Temporary Plans ordered July 11, 1975. The following criteria were utilized to determine the districts in which, in our view, special elections are required. Since our interest arises primarily by virtue of the Voting Rights Act, our criteria are limited to situations involving potential dilution of the black vote. However, it well may be that the Court should consider special elections for any districts in which the constituency is substantially altered.

Criteria used:

(1) The Temporary Plan district was a multi-member district and the district under the Permanent Plan has a black voting age population majority or contains a substantial black population; or,

(2) The district pursuant to the Temporary Plan, although a single-member district, was altered and

the Permanent Plan district has a black voting age population majority where none existed before; or

(3) The district pursuant to the Permanent Plan was totally or partially contained in a Temporary Plan district part of which is in a Permanent Plan district which meets criteria 1 or 2 *supra*.

The application of these criteria results in recommended special elections in 14 senate districts and is explained below for each district.

Districts 14, 15, 16, 17, 28 and 29:

Temporary Plan districts 11,[1] 12,[2] and 15[3] were multi-member districts which were subdivided in the Permanent Plan, to create single member districts all of which have a majority black voting age population.

Districts 1, 2, 38, 39, 40, 41, 42 and 43:

Temporary Plan district 1,[4] 25[5] and 27[6] were multi-member districts which were subdivided in the Permanent Plan to create single-member districts which contain a substantial black population but which do not have a majority black voting age population. While only one district (District 40) resulting from the realignment of old districts 26 and 27 has a black population sufficient in our view to warrant a special election (42.6%), special elections must be held in all four of the resulting new districts since an election in any one of those districts leaves the present elected officials representing a district substantially different from that in which he was elected and, furthermore, presents difficulties regarding which of the presently elected officials must run for re-election.

Respectfully submitted,

/s/ Gerald W. Jones
MICHAEL D. JOHNSON
Attorneys
Department of Justice
Washington, D.C. 20530

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[1] Permanent Plan districts 14 and 15.

[2] Permanent Plan districts 16 and 17.

[3] Permanent Plan districts 28 and 29.

[4] Permanent Plan districts 1 and 2.

[5] Permanent Plan districts 38 and 39.

[6] Along with Temporary Plan district 26, this constitutes Permanent Plan districts 40, 41, 42 and 43.

MISSISSIPPI SENATE DISTRICTS (COURT ORDER—AUGUST 24, 1976)
IN WHICH THE DEPARTMENT OF JUSTICE RECOMMENDS
SPECIAL ELECTIONS BE HELD

Permanent Plan Dist. #	Blk. Pop. %	Blk. VAP * %	Temporary Plan Dist. #	# Sen.	Blk. Pop. %	Blk. VAP * %	Counties
1	38.1		1	2	40.68		DeSoto
2	43.1						Marshall
							Lafayette
14	58.9	50.71	11	2	62.00	54.00	Bolivar
15	65.1	57.53					Sunflower
16	57.0	51.52	12	2	56.26	50.8	Washington
17	57.0	50.08					Humphries
28	62.0	55.86	15	2	61.36	54.0	Holmes
29	60.8	53.82					Madison
							Yazoo
							Sharkey
							Issaquena

* Black VAP not shown where less than 50%.

38	54.0	25	2	53.37	Jefferson
39					Adams
					Franklin
					Wilkinson
					Amite
40	42.6	26	1	42.74	Pike
41	33.8	27	3	30.31	Walthall
42	28.3				Jeff Davis
43	30.8				Lawrence
					Marion
					Covington
					Jones

* Black VAP not shown where less than 50%

[Certificate of Service Omitted]

IN THE
UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

Civil Action No. 3830(A)

[Filed Sept. 16, 1976]

[Caption Omitted]

MOTION FOR SPECIAL ELECTIONS
(HOUSE PLAN)

Plaintiffs, by their attorneys, move the Court pursuant to its Judgment of September 8, 1976, for an order shortening the terms of office of incumbents and ordering special elections to coincide with the November 2, 1976 Presidential election, or in any event prior to January 1, 1977 in the following 42 [1] new districts:

(1) Districts in which black voting strength was diluted, cancelled out, and minimized under the 1975 temporary court-ordered plan, but which under the new plan have black population majorities (1970 Census) and/or black voting age population majorities (1975 estimates): New Districts 3, 8, 10, 15, 16, 17, 22, 24, 25, 26, 27, 32, 33, 34, 37, 38, 47, 52, 56, 79, 81, 89, and 97.

(2) Districts in which incumbent House members are thrown together in the same district: New Districts 6, 8, 10, 20, 44, 53, 56, 74, 83, 88, 93, 99, and 113.

(3) Districts which are without any representation under the new plan because the new districts place 13 incumbent representatives together in the same district: New Districts 4, 11, 16, 30, 47, 52, 54, 75, 81, 89, 95, 98, and 115.

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[1] Seven of the black majority districts are also districts in which incumbents are pitted against each other or districts without any representation under the new plan.

A. *Dilution and Minimization of Black Voting Strength.*

District 3.

Black voting strength in Marshall County has been diluted since the 1971 court-ordered plan in which majority black Marshall County (62.0% black) was combined with larger, majority white DeSoto (35,885 persons, 64.7% white) in a white majority multi-member district (54.0% white, 45.9% black) which diluted black voting strength in Marshall. The 1975 temporary plan perpetuated this dilution by (1) combining Desoto and Marshall in District 3B for the election of a floater representative and (2) enveloping the black population concentration in Marshall large enough for independent representation in a county-wide district, District 3A, containing 24,027 persons, 5,856 persons in excess of the norm, leaving Marshall County voters unconstitutionally underrepresented by a total variance of +32.23%.

The 1976 permanent plan provides black voters in Marshall County with a black majority district which is 67.2% black (1970 Census),[2] and in which blacks constitute 57.5% of the total 1975 estimated voting age population (see Exhibit 1, attached).[3]

District 10.

In the 1975 temporary plan, black voting strength in majority black Panola County (51.36% black) was diluted by combining it with majority white Yalobusha County (59.35% white) in a multi-member district which had a white districtwide majority of 52.0% and in which blacks constituted only 38.9% of the districtwide 1975 voting age population (Ex. P-13).

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[2] For beats and precincts for which 1970 Census data was not available, the Census population was estimated based on 1970 Census enumeration district population statistics.

[3] 1975 voting age population statistics are based on the Mississippi State University projections of Ellen S. Bryant and Sanabel El-Attar, *Population of Mississippi Legislative and Congressional Districts, 1970, and Projections to 1975* (1973) (Ex. P-13).

The 1976 permanent plan provides black voters in Panola County with a black majority district which is 53.8% black in total population (Exhibit 1, attached).

Districts 8, 15, 16, and 17.

Black voting strength in the 1975 temporary plan in old Districts 11 (Coahoma, two representatives, 11A (Quitman and Tunica), and 11B (Coahoma, Quitman, and Tunica)) was diluted by countywide and multi-county districtwide voting in counties in which no black candidates had been successful in gaining election to countywide office and in which, measuring the realities of black voting strength in terms of registration and turnout, the optimum black vote is less than 50% even though blacks constitute a majority of the voting age population (testimony of Rims Barber, Associate Director of Delta Ministry, May 7, 1975 Tr. 219-247, Exs. P-30, P-31).

In the 1976 permanent plan, dilution of black voting strength is substantially diminished in two districts, Districts 8 and 16, in which blacks constitute, respectively, 74.0% and 69.0% of the total population, and 65.3% and 61.8% of the 1975 voting age population (Ex. P-13). In two other districts, Districts 15 and 17, blacks constitute majorities of 54.7% and 58.7% of the total population. The creation of single-member districts, thus eliminating the necessity for candidates to run in countywide and multi-county districts, plus these increased black population statistics in single-member districts, gives black voters, for the first time, a realistic opportunity to elect candidates of their choice.

District 27.

In old District 12 in the 1975 temporary plan, 1975 black voting age population was approximately 50-50 with white voting age population in Tallahatchie County (Ex. P-13). Given that voting was countywide and that black voter registration is disproportionately lower than white registration (Ex. P-7; Ex. P-10), blacks were deprived of the opportunity to elect candidates of their choice.

Under the 1976 permanent plan, this dilution caused by countywide voting is offset by subdividing Tallahatchie County into a single-member district in which blacks are given an equal opportunity to elect candidates of their choice in a district in which blacks constitute 62.4% of the total population (1970 Census) and 52.6% of the 1975 voting age population (Ex. P-13) (see Exhibit 1, attached).

Districts 25 and 26.

In the 1975 temporary plan, although blacks had a slight 53.0% edge in the 1975 voting age population (Ex. P-13), the fact of countywide voting in Sunflower County, a county in which no black candidate has gained election to any countywide office, and uncontradicted voting strength statistics showing that the optimum black vote was less than 50% (Barber testimony, May 7, 1975 Tr. 219-247; Exs. P-30, P-31), shows that countywide voting in this multi-member district diluted black voting strength.

Under the 1976 permanent plan, this dilution is offset by the elimination of countywide voting and the creation of single-member districts, in one of which (District 25), blacks constitute 66.9% of the total population (1970 Census) and 57.6% of the 1975 voting age population, and in the other of which (District 26) blacks constitute a 58.5% majority of the total population (see Exhibit 1, attached).

Districts 22 and 24.

In the 1975 temporary plan, black voting strength was diluted in old District 14, Bolivar County, by (1) at-large, countywide voting in a county in which no black candidate has been elected to countywide office, and (2) in a geographically large (923 sq. mi.) district electing 3 representatives, and (3) in which although blacks had a slim 51.4% voting age population majority, because of lower registration and turnout the optimum black vote was less than 50% (Barber testimony, May 7, 1975 Tr. 219-247, Exs. P-30, P-31).

This dilution of black voting strength is diminished in single-member Districts 22 and 24, in which blacks

constitute both a majority of the total population and a substantial majority of the 1975 voting age population (59.6% and 54.5% respectively) (see Exhibit 1, attached).

Districts 32, 33, and 34.

1975 temporary plan District 15 (Washington and Issaquena Counties) was a geographically large (692 sq. mi.) multi-county, multi-member district electing 4 representatives, in which black voting strength was diluted and in which blacks constitute a minority of only 49.5% of the 1975 voting age population (Ex. P-13). The voting strength of blacks living in majority black Issaquena County, and the voting strength of 38,360 blacks living in Washington County were diluted by encompassing them in a white voting age population majority district (see Exhibit 1, attached).

Under the 1976 permanent plan, three single-member districts carved out of this large multi-member district, Districts 32, 33, and 34, are both majority black in population and in 1975 voting age population (see Exhibit 1), thus alleviating the manifest dilution effected by the prior multi-member district.

Districts 37 and 38.

The 1975 temporary plan combined Leflore County and Carroll County in a multi-county, multi-member district electing three representatives in which the substantial potential of black voting strength of Leflore County was diluted by including it in a district in which whites held a 52.7% majority of the total 1975 voting age population (Ex. P-13). At-large countywide and districtwide voting was perpetuated in this district in the 1975 plan even though the U.S. District Court for the Northern District of Mississippi and the U.S. Court of Appeals for the Fifth Circuit had ruled that at-large voting in Leflore County unconstitutionally diluted black voting strength. *Moore* v. *Leflore County Bd. of Election Commissioners*, 351 F. Supp. 848 (N.D. Miss. 1971) (three-judge court) (striking down at-large elections), 361 F. Supp. 603 (N.D. Miss. 1972), 361 F. Supp. 609 (N.D. Miss. 1973)

(refusing to allow at-large elections), *aff'd*, 502 F.2d 621 (5th Cir. 1974).

This unconstitutional dilution has now been offset in new Districts 37 and 38. In District 37, which includes Beats 4 and 5 of Leflore County, blacks constitute 69.1% of the total population (1970 Census), and 61.2% of the 1975 voting age population. In District 38, which includes Carroll and part of Leflore, blacks constitute 51.3% of the total population.

District 52.

Old Districts 23, 23A, and 23B in the 1975 temporary plan (electing a total of five representatives) diluted black voting strength by combining majority black Noxubee County (65.8% black) with majority white Oktibbeha County (64.6% white) in District 23A in which whites were 66.6% of the 1975 voting age population districtwide (Ex. P-13) and with both Oktibbeha and majority white Lowndes County (67.1% white) in District 23B, in which whites were 71.0% of the 1975 voting age population districtwide (Ex. P-13).

New District 52 offsets this dilution of Noxubee black voting strength by creating a single-member district in which blacks constitute 68.0% of the total population and an estimated 59.4% of the 1975 voting age population.

District 79.

The 1975 temporary plan in old District 24 diluted black voting strength through countywide and districtwide voting in a multi-member district which elected four representatives from Kemper and Lauderdale Counties. Under this arrangement, the voting strength of the 20,630 blacks residing in Lauderdale, more than enough to create an 18,171 single-member district, was diluted by districtwide multi-county voting in a district in which whites were a majority of the total population (65.5%) and a greater majority of the 1975 voting age population (72.0%) (Ex. P-13).

This dilution is diminished in new District 79, in which blacks constitute 56.1% of the total population of the new district.

Districts 47 and 56.

In the 1975 temporary plan, Sharkey and Yazoo Counties were placed together in a multi-member district (old District 29). Although both counties were majority black in total population, the combining of the two in a single multi-county, multi-member district diluted black voting strength by producing a district in which whites constituted a 52.9% majority of the 1975 voting age population (Ex. P-13). This result is achieved because, although both counties are black majority in population, Yazoo County has a white 1975 voting age population majority of 55% (Ex. P-13).

This dilution is offset under the 1976 plan in which two black majority districts are carved out of old District 29. District 47 has a black population majority of 64.8% and an estimated 1975 black voting age population majority of 55.5%. District 56, included entirely within Yazoo County, has a slight black population majority of 50.9%.

District 81.

Of all the multi-member districts created by the 1971 and 1975 temporary plans, the discrimination in old District 30 was among the most egregious. Claiborne County, which is one of the blackest counties in the state (74.58% black, 1970 Census) and which has numerous black countywide elected officials, was combined with 58.85% white majority Warren County with the effect of diluting black voting strength in a white districtwide population majority of 52.7% and a greater white districtwide 1975 voting age population majority of 58.5%. Further, the voting strength of 18,355 blacks living in Warren County was diluted and cancelled out in the white districtwide population and voting age population majority.

Under the 1976 plan, majority black Claiborne is combined with majority black Jefferson County in new District 81 which has a black population majority of 74.9% and a black 1975 estimated voting age population majority of 69.9%.

District 89.

Although there are 17,865 blacks in Adams County, enough to comprise a majority in a single-member district, black voting strength was cancelled out in the 1975 plan in old District 33 by countywide voting in a multi-member district which had a white population majority of 51.93% (1970 Census) and a greater white 1975 voting age population majority of 56.4% (Ex. P-13). Further, in the Adams County redistricting case, *Howard* v. *Adams County Board of Supervisors*, Judge Nixon in an unreported District Court decision rejected the Board's proposal for countywide voting for supervisors as inequitable (Civil No. 1352(N), S.D. Miss., Vicksburg Div., Opinion of July 20, 1971).

This dilution is offset in the 1976 single-member plan by giving Adams County blacks a black population majority of 53.0% in new District 89.

District 97.

In the 1975 plan, black voting strength was diluted and cancelled out in old District 34, comprising Amite, Franklin, and Wilkinson Counties, by combining Wilkinson, which had a black voting age population majority of 62% (1975, Ex. P-13), with the two white voting age population majority counties of Amite (59% white 1975 VAP) and Franklin (67% white 1975 VAP). The district had a total white 1975 voting age population majority of 54.2%, thus depriving black voters of any realistic opportunity to elect legislators of their choice.

Under the 1976 plan, District 97, which includes Wilkinson and three beats of Amite, has a black population majority of 60.6% and a black 1975 voting age population majority of 53.3%.

Constitutional Standards.

The above discussion points out the districts in the 1975 plan in which black voting strength was diluted and which that dilution is diminished or offset to varying degrees by the single-member districts contained in the 1976 plan. For a demonstration of the constitutional standards and their applicability to the old districts of the 1975 plan, we would refer the Court to our previous

memos on this subject, including Plaintiffs' Memorandum of Law, filed February 14, 1975, Plaintiffs' Supplemental Post-Trial Memorandum of Law, filed May 10, 1975, Appellants' Jurisdictional Statement, *Connor* v. *Waller*, 421 U.S. 656 (1975), Plaintiffs' Motion to Alter or Amend Judgment, filed July 21, 1975, and Plaintiffs' Memorandum of Law, filed June 23, 1976.

B. *Districts in Which Incumbents Are Placed Together in a Single District and Districts Which Are Not Represented in the New Plan.*

Plaintiffs also urge the Court to order special elections in those districts in which two incumbents are thrown together in a single new district, and in those districts in which, under the new plan, there are currently no representatives.

The reasons in both cases are simple and obvious. Each district which contains two incumbent representatives under the new plan is currently overrpresented in the Legislature by a deviation of approximately 100 percent. For each approximately 18,171 people in each of these districts, there currently are two representatives, rather than the one required by the Constitution. A list of these districts is attached hereto as Exhibit 2. The voters in these two-member districts, to whom the representatives are responsible and on whom the current representatives must rely for reelection, under the new plan now have twice the political power and influence in the Legislature of districts which have only one resident representative under the new plan.

Each district which has no incumbent representative under the new plan, which also are listed in Exhibit 2 attached, currently has no representation and under the new plan no current political power or influence in the Legislature. The voters in these districts which have no resident legislators are totally unrepresented under the new plan. Hence, special elections are required in these new districts as well.

WHEREFORE, plaintiffs pray that their motion be granted.

Respectfully submitted,

/s/ Frank R. Parker
FRANK R. PARKER

Lawyers' Committee for
Civil Rights Under Law
233 North Farish Street
Jackson, Mississippi 39201

Attorney for Plaintiffs

[Certificate of Service Omitted]

Exhibit 1. NEW HOUSE DISTRICTS IN WHICH SPECIAL ELECTIONS SHOULD BE HELD.

Old District	Description	No. of Reps.	1975 Voting Age Pop. White % [1]	1975 Voting Age Pop. Black % [1]	New District	Description	% Black (1970 Census) [2]	1975 Black VAP Percent [3]
3,3A,3B (Floterial)	DeSoto and Marshall	3	69.3 %	30.7 %	3	Marshall, Beats 1, 2, 3 and 4	67.2 %	57.5 %
9	Panola and Yalobusha	2	61.1 %	38.9 %	10	Panola, Beats 1, 2 and 5	53.8 %	44.5%
11	Coahoma	2	43.4 %	56.6 %	15	Coahoma precincts	54.7 %	46.6 %
11A	Quitman and Tunica	1	46.4 %	53.6 %	16	Coahoma precincts	69.0 %	61.8 %
11B (Floterial)	Coahoma, Quitman and Tunica	1	44.5 %	55.5 %	8	Tunica, Beats 1,2,3, and 4,Armory; Coahoma precincts	74.0 %	65.3 %
					17	Quitman; Tunica, Two Mile Lake	58.7 %	49.0 %
12	Tallahatchie	1	50.0 %	50.0 %	27	Tallahatchie, Beats 1,2, 4 and 5, Paynes	62.4 %	52.6 %
3	Sunflower	2	47.0 %	53.0 %	25	Sunflower, Beats 1 and 3, Moorhead,	66.9 %	57.6 %
					26	Sunflower, Beat 5, other precincts	58.5 %	48.3 %
14	Bolivar	3	48.6 %	51.4 %	22	Bolivar, Beat 1 and other precincts; Sunflower, Boyer-Linn	69.0 %	59.6 %
					24	Bolivar, Beat 3 and N. Cleveland and Merigold	70.9 %	54.5 %

1/ E. Bryant and S. El-Attar, Population of Mississippi Legislative and Congressional Districts, 1970, and Projections to 1975 (Mississippi State University 1973) (Ex. p-13).

2/ Based on 1970 Census data, estimated for precincts based on census enumeration districts.

3/ Estimates based on Ex. P- 13, supra.

Old District	Description	No. of Reps.	1975 Voting Age Pop. White %	Black %	New District	Description	% Black (1970 Census)	1975 Black VAP Percent
15	Issaquena and Washington	4	50.6 %	49.4 %	32	Issaquena; Washington, Beat 1 and Avon	57.9 %	52.1 %
					33	Washington, Precincts	55.7 %	50.6 %
					34	Washington, Beat 3 and New County Garage	56.0 %	50.9 %
17	Carroll and Leflore	3	52.7 %	47.3 %	37	Leflore, beats 4 and 5	69.1 %	61.2 %
					38	Carroll; Leflore, two precincts, Attala, Beat 3 (less Possumneck)	51.3 %	41.4 %
23	Lowndes	2	74.6 %	25.4 %				
23A	Oktibbeha and Noxubee	2	66.6 %	43.4 %				
23B	Lowndes, Noxubee, and Oktibbeha	1	71.0 %	29.0 %	52	Noxubee; Lowndes, Crawford and Artesia	68.0 %	59.4 %
	Kemper and Lauderdale	4	72.0 %	38.0 %	79	Lauderdale, Meridian precincts and East Bonita	56.1 %	49.6 %
29	Sharkey and Yazoo	2	52.9 %	47.1 %	47	Sharkey; Humphreys, Beat 5; Yazoo prects.	64.8 %	55.3 %
					56	Yazoo precincts	50.9 %	42.5 %

Old District	Description	No. of Reps.	1975 Voting Age Pop. White %	Black %	New District	Description	% Black (1970 Census)	1975 Black VAP Percent
30	Claiborne and Warren	3	58.5 %	41.5 %	81	Claiborne and Jefferson	74.9 %	69.9 %
33	Adams	2	56.4 %	43.6 %	89	Adams, Beats 4 and 5, Somerset	53.0 %	48.6 %
34	Amite, Franklin, and Wilkinson	2	54.2 %	45.8 %	97	Wilkinson; Amite, Beats 1, 2, and 3	60.6 %	53.3 %

EXHIBIT 2. HOUSE MEMBERS PLACED IN THE SAME DISTRICT AND DISTRICTS WITHOUT REPRESENTATION.

New District	House Members	District Without Rep.
6	Irby Benjamin (Reinzi) Jimmy Ray McCalla (Corinth)	4
8	Harry Neblett (Jonestown) Malcolm Mabry (Dublin)	16
10	Wes McIngvale (Batesville) Harry Bryan (Batesville)	11
20	Tommy Brooks (Tupelo) Harold Montgomery (Tupelo)	30
44	Horace Harned (Starkville) Glenn Shumake (Columbus)	52
53	George Rogers (Vicksburg) Donald Cross (Vicksburg)	54
56	Tommy Campbell (Yazoo City John Sharpe Holmes (Yazoo City)	47
74	Lonnie Johnson (Rankin Co.) Jimmie Morrow (Brandon)	75
83	Bobby Anderson (Wesson) Harold Fortenberry (Monticello)	81
88	Walter Brown (Natchez) Tommy O'Beirne (Natchez)	89
93	Tucker Buchanan (Laurel Vincent Scoper (Laurel)	95
99	Tommy Walmon (McComb) Ashley Atkinson (McComb)	98
113	Glenn Endris Jerry O'Keefe	115

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

[Filed Sept. 20, 1976]

Civil Action No. 3830(A)

MOTION TO ALTER AND AMEND JUDGMENT AND PLAINTIFFS' OBJECTIONS TO 1976 COURT-ORDERED LEGISLATIVE REAPPORTIONMENT PLAN

Plaintiffs, by their attorneys, move the Court to alter and amend its Judgment of September 8, 1976, to conform its court-ordered legislative reapportionment plan to constitutional and equitable requirements, and file herewith their objections to the Senate and House redistricting plans.

A. SENATE PLAN.

1. Upon information and belief, in estimating precinct population for the Senate plan, the Court used not 1970 Census data or even current voter registration data, but estimated precinct population using the votes received by the Democratic candidates for Governor in the August 5, 1975 Democratic primary election for each precinct used in the plan. This is a totally unreliable method of calculating or estimating population statistics. The method of estimation results in extreme variances from population equality and apparently excludes persons who did not vote in that primary and Republican voters from the population statistics.

2. Plaintiffs object to the use of supervisors' districts (beats) in legislative redistricting. Throughout the state the boundaries of supervisors districts fractionate, dilute, and minimize and cancel out black voting strength, and are uncompact. Further, in most cases supervisors districts (those drawn by Comprehensive Planners, Inc.) are drawn to attempt to equalize county-maintained road

mileage and land area, factors which have no place in legislative reapportionment.

Further, throughout Mississippi supervisors' district (beat) lines are based not on natural and physical boundaries such as rivers, streams, highways, county roads and the like, but are defined by land section lines which are invisible to the voter and fail to provide voters a guide regarding which legislative district they are in (see *Connor* v. *Johnson*, 330 F. Supp. 506, 518).

3. The Senate plan fails to provide substantial equality of population among the districts, in violation of the Equal Protection Clause of the Fourteenth Amendment. According to the statistics provided in the Court plan, the Senate plan has a total deviation of 16.7 percent, which is an unconstitutionally and inequitably high deviation for a court-ordered plan. Moreover, our analysis of the Senate plan indicates that the total deviation is in fact much higher. Our analysis indicates an error in the population figures for Districts 28 and 29. According to our analysis, the Court erroneously included all of Census enumeration districts 7, 27, and 28 in Holmes County Beats 2 and 3 (District 28), when in fact a substantial portion of those ED's are outside of Beats 2 and 3 and lie within Beats 1 and 4 (District 29). Copies of the Holmes County Census map and redistricting plan maps are attached. Further, a small portion of ED 25 which is within Beat 3 was not included in the calculations for Beat 3. Accordingly, our calculations, based on Census enumeration districts and estimating for split ED's indicate the following population for District 28 and 29:

District	Court's Total	Plaintiffs' Total (Based on 1970 Census)	Correct Variance
28	45,612	44,943	+5.42%
29	46,223	46,892	+9.99%

These corrected population statistics show a total deviation in the Senate plan between the maximum minus variance, District 38 (—8.33%), and the maximum plus variance, District 29 (+9.99%), of 18.32%.

There are in the record other alternative plans which would provide much greater equality of population among

the districts even preserving county boundaries. The Henderson County Boundary Plan (Ex. P-8, Exhibit 3), attached hereto, still adheres to county boundary lines, yet contains a total deviation of only 10.51 percent. (The Henderson Senate plan is incomplete because it contains 17 multi-member districts. But those multi-member districts can be subdivided into single-member districts along beat and precinct lines with no greater deviation from population equality, just as the Court has done with its Senate plan.)

4. The Senate plan in a number of districts dilutes black voting strength:

(a) The single-member districts in the Senate plan are based in substantial part and are carved out of the 1971 and 1975 court-ordered multi-member district plan which diluted black voting strength in a number of districts by combining majority black counties with majority white counties for districtwide white majorities, and by providing for countywide, at-large voting.

(b) Districts 31 through 35 are based on the Hinds County supervisors' districts which split up and divide the county's heaviest concentration of black population located in Jackson (69 percent of the total county black population) among all five districts. Although two districts have slight black population majorities, all five districts are majority white in voting age population and registered voters. These figures, taken from the record in *Kirksey* v. *Board of Supervisors of Hinds County, Mississippi*, No. 75-2212, U. S. Court of Appeals for the Fifth Circuit, are attached.

Plaintiffs move the Court to adopt plaintiffs' Census Tract plan (Ex. P-14) as an alternative to this discriminatory supervisors' district arrangement.

(c) In several instances, majority black counties, or majority black parts of majority black counties, are combined with majority white counties, or parts of majority white counties, resulting in districts which are majority white districtwide. For example, Claiborne County, which is 74 percent black, is combined with Beat 3 of Copiah County and Lincoln County, which is 69 percent

white, to make up a white majority district which dilutes black voting strength in Claiborne County:

District 37	Total Pop.	White	Black
Claiborne	10,086	2,536	7,522
Copiah, Beat 3 [1]	4,705	1,879	2,826
Lincoln	26,198	18,138	8,035
Totals	40,989	22,553(55.02%)	18,383(44.85%)

Similarly, 75 percent Black Jefferson County is combined with four supervisors' districts in white majority Adams County (District 38) to dilute black voting strength in Jefferson.

Such dilution is not necessary. An alternative would be to combine Claiborne, Jefferson, and Copiah in a single-member district with a variance of only +3.51 percent which would not dilute black voting strength and which would produce a districtwide black majority:

	Total	White	Black
Claiborne	10,086	2,536	7,522
Jefferson	9,295	2,296	6,996
Copiah	24,749	12,298	12,437
Totals	44,130	17,130(38.82%)	26,955(61.08%)

Plaintiffs move the Court to accept this alternative, and to adjust the adjoining district to accommodate it.

Similar dilution may be found in Districts 1, 2, 11, 22, 23, and 39.

5. Although the statistics set out by the Court in its plan indicate that 14 districts are majority black in population, there are errors in the Court's tabulations and these figures do not accurately reflect present black voting strength in those districts. For example, the statistics given for Districts 32 (Hinds County Beat 2) and 33 (Hinds County Beat 3), 54.3 percent black and 51.2 percent black, respectively, are in error. The record in the *Kirksey* case indicates that present Beat 2 is 53.4

[1] Beat 3 population estimated from 1970 Census enumeration districts. Other figures are 1970 Census.

percent black and present Beat 3 is 27.7 percent black, *Kirksey* v. *Board of Supervisors of Hinds County*, 402 F. Supp. 658, 668 (S.D. Miss. 1975), aff'd, 528 F.2d 536 (5th Cir. 1976), pending on rehearing en banc.

A more reliable measure of voting strength in these districts is the Mississippi State University 1975 projections of voting age population by race (Ex. P-13). These figures (applying the countywide proportions to parts of counties) show that at best there are only six districts with black 1975 voting age population majorities, none of them above 56 percent:

District	1970 Black Pop. Percent [2]	1975 Black VAP Percent [3]
12	57.2%	45%
13	63.9%	56%
14	59.6%	49.5%
15	64.4%	55%
16	57.4%	52%
17	55.5%	48%
18	57.9%	49%
19	51.9%	42%
28	62.0%	52%
29	60.8%	52%
32*	53.4%	48.0%
35*	54.0%	48.6%
38	55.6%	51%
39	51.3%	44%

B. HOUSE PLAN.

1. Objections 1 and 2 set out in the objections to the Senate plan are reiterated here.

2. The House plan fails to provide substantial equality of population among the districts, in violation of the

[2] 1970 Census data and estimates for beats and precincts using Census enumeration districts and Census statistics.

[3] Estimates based on county ratios contained in Mississippi State University study, Ex. P-13, except where indicated.

* 1970 black population and 1970 black voting age population taken from record in *Kirksey* case, supra.

Equal Protection Clause of the Fourteenth Amendment. According to the statistics provided in the Court plan, the House plan has a total deviation of 18.5 percent. However, our analysis of the House plan indicates that the total deviation is in fact much higher.

Our analysis indicates that there are errors in the population calculations for Districts 53, 54, 55, and 56. District 53 is composed of only six precincts in the rural, sparsely populated southern portion of Warren County. Our analysis, based on estimates of precinct population from 1970 Census data, indicates that District 53 contains only an estimated 9,880 persons, for a variance of —45.63 percent. Census maps (which are attached) show that these six precincts include in whole or in part ED's 44 (part), 45 (part), 46 (part) (we also include 46B), 47, 48, and 49. Even if all of these ED's with no splits were included within District 53, the total population of the district, according to 1970 Census data, would equal only 10,699 persons.

District 54, on the other hand, is composed of seven precincts, all but one (Jonestown) entirely within the City of Vicksburg (pop. 25,478), the most heavily populated portion of Warren County. Our analysis indicates that according to 1970 Census data (estimating for split ED's), District 54 contains a total of 26,031 persons, for a variance of +43.25 percent.

These corrected population statistics show a total deviation in the House plan between the maximum minus variance, District 53 (—45.63%), and the maximum plus variance, District 54 (+43.25%), of 88.88 percent. Our analysis further shows that 12 districts have a variance of more than 10 percent, plus and minus. These are: Districts 54 (+43.26%), 45 (+12.0%), 60 (+12.0%), 34 (+11.0%), 22 (+10.4%), 53 (—45.63%), 55 (—20.96%), 56 (—16.3%), 24 (—15.4%), 16 (—13.6%), 23 (—10.8%) and 85 (—10.2%).

3. For districts 118, 119, 120, 121, and 122 (Jackson County) there are no population statistics available. The District Court order approving the Jackson County redistricting makes no findings of fact with regard to the population for each of the new supervisors' districts

(beats) within Jackson County. In its September 8 order, the Court recognized that no population statistics for Jackson County beats were available when it simply divided the total county population five ways to arrive at the population for each beat, but there is nothing in the record nor in the court order in the Jackson County redistricting case to justify this apportionment of population.

4. Throughout the House plan, voting precincts are used to define districts. However, many counties in which precincts are used, such as Holmes, Covington, Alcorn, and Tallahatchie, have no precinct boundaries at all. Hence, it is impossible geographically to define the boundaries of the legislative districts established by the Court in those counties.

5. The various portions of District 99 (Pike County, Beats 2, 3, and 4) are not contiguous. Beats 1 and 5 cut through the City of McComb to separate Beat 2 from Beats 3 and 4. We suggest that this can be cured by reconstituting District 98 to include Amite County, Beats 4 and 5, and Pike County, Beats 4 and 5, and by reconstituting District 99 to include Pike County, Beats 1, 2, and 3.

WHEREFORE, we move the Court as follows:

1. Order a hearing on plaintiffs' objections to the court-ordered Senate and House plans.

2. Order those necessary changes in the Senate and House plans which can be made prior to the upcoming special elections which can be made with a minimum of confusion and alteration of the court-ordered plans.

3. Order the August 24 Senate plan and September 8 House plan into effect as interim plans for the upcoming special elections to be held this year, with any changes which can be made with convenience prior to those special elections.

4. Order such other substantive changes as may be necessary to conform the Senate and House plans to constitutional requirements to take effect after the special elections are held and to take effect for the regular 1979 legislative elections.

In any event, the special legislative elections previously proposd by this Court and ordered by the United States Supreme Court in its mandate of May 19, 1976 should be permitted to go forward on the basis of the single-member districts ordered by the Court, with such changes as can be made prior to the election, in those districts in which special elections are required to cure the dilution of black voting strength present in the 1975 temporary plan and to remedy extreme malapportionment in that plan, and to make necessary adjustments in representation caused by the promulgation of single-member districts. These single-member districts, particularly in the House plan, go far toward remedying the dilution of black voting strength present in the prior plan. However, because of residual malapportionment, racial dilution, and districting problems which remain in the 1976 court-ordered plan, plaintiffs move the Court to make additional alterations in its plan or to consider alternative plans proposed by plaintiffs and plaintiff-intervenor as permanent plans for the 1979 legislative elections.

Respectfully submitted,

/s/ Frank R. Parker
FRANK R. PARKER
Lawyers' Committee for Civil
Rights Under Law
233 North Farish Street
Jackson, Mississippi 39201

Attorney for Plaintiffs

EXHIBITS TO MOTION

EXHIBIT A. Holmes County Census map.

EXHIBIT B. Map showing Holmes County redistricting plan.

EXHIBIT C. Henderson County Boundary Senate plan.

EXHIBIT D. Hinds County beat population and voting age population figures.

EXHIBIT E. Warren County Census map.

[Exhibits Omitted]

[Certificate of Service Omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI JACKSON DIVISION

Civil Action No. 3830(A)

[Filed Sept. 28, 1976]

[Caption Omitted]

PROPOSAL BY THE UNITED STATES FOR SPECIAL ELECTIONS

In its Order of September 8, 1976, this Court set forth a permanent apportionment plan for the Mississippi State House of Representatives and directed the parties to this litigation:

> ". . . to file a list of the districts for the election of Representatives in which special elections should be held . . . assigning their reasons as to each district individually."

Without necessarily agreeing with all of the districts set forth in the Court's ordered plan, as to which our analysis is continuing and with respect to which we will request leave to file our views concerning the sufficiency of the plan as a permanent plan for the 1979 election, the United States hereby submits its analysis of the need for special elections under the plan drawn by the Court.

The attached chart sets forth the districts in which we submit special elections are appropriate, indicating the number of the district as set forth in the Court's Order of September 8, 1976, and the corresponding district number under the Temporary Plan ordered July 11, 1975. The criteria set forth below are derived from relevant case authorities and were utilized to determine the districts in which special elections are required. Since our interest arises primarily by virtue of the Voting Rights Act, our criteria are limited to situations involving potential dilution of the black vote or other

Fifteenth Amendment considerations. As discussed later in this memorandum the criteria have been modified from those set forth in our memorandum on the Senate plan. As with the Senate plan, we suggest that the Court may wish to consider the need for special elections under Fourteenth Amendment principles for any district in which the constituency is substantially altered.

Criteria Used:

(1) The Temporary Plan district was a multi-member district and the district under the Permanent Plan has a black voting age population majority or contains a substantial black population if, in the latter instance, the black minority in the resulting single-member district is appreciably larger than the black percentage in the previously existing multi-member district; or,

(2) The district pursuant to the Temporary Plan, although a single-member district, was altered and the Permanent Plan district has a black voting age population majority where none existed before.

The application of these criteria results in recommended special elections in 29 house districts. The house districts, and the criteria under which each district falls, are incorporated in the attached chart.

In addition, we would like to take this opportunity to bring to the Court's attention an error in the application to the senate plan criteria set forth in our submission to the Court on September 8, 1976. In that proposal we listed new senate districts 40, 41, 42 and 43 as districts in which special elections should be held. However, our continuing analysis shows that since old district 26 was a single-member district, criteria number 1 in our prior proposal would not apply to new senate district 40 and since new district 40 does not have a majority black voting age population criteria number 2 would not apply. Furthermore, new district 40 is, except for two beats of Walthal County, essentially the same as old district 26.

A somewhat similar situation exists with regard to new senate district 43. Except for one beat and a portion of another (2 precincts), Jones County constitutes new senate district 43 whereas one of the old subdistricts (27(a)), electing its own senator, in previously existing floterial district 27 was made up of Jones County in its entirety. Thus, with a minor variation the new district 43 constituency conforms to that of the old Jones County subdistrict which elected a senator.

For these reasons, application of our criteria 1 and 2 of the previous memorandum would not warrant special elections in either district 40 or 43 of the senate plan. Districts 41 and 42 were included under criteria number 3 only because of their interrelationship with districts 40 and 43. Consequently, we request the Court's permission to withdraw our recommendation for special elections in senate districts 40, 41, 42 and 43. (We note in passing that the significant alteration of the constituency in districts 41 and 42 may raise the kind of Fourteenth Amendment questions alluded to previously as non-dilution type issues appropriate for the Court's consideration.)

Finally, our analysis has occasioned us to re-evaluate the criteria stated in our memorandum on the senate plan. In doing so, we conclude that criteria number 3 in our previous memorandum is not primarily one dealing with Voting Rights Act-Fifteenth Amendment considerations, geared as it is toward the fallout effects of situations which, in our view, do involve such considerations. Accordingly, we have eliminated criteria number 3 from our proposal relating to the house plan. In addition, we have reassessed the senate plan without regard to criteria number 3. As reflected in this memorandum we have also refined criteria number 1 and, as a result, conclude that new senate districts 1 and 2 may also be eliminated from the list of special election districts.

In conclusion, therefore, we offer the attached list of house of representatives districts in which special elections should be held and request that new senate districts 1, 2, 40, 41, 42 and 43 be eliminated from our

previously submitted list of senate districts recommended for special elections. As modified, our recommendation is that special elections should be scheduled in 8 senate districts and 29 house districts in the Court's proposed plan.

Respectfully submitted,

/s/ Gerald W. Jones
MICHAEL D. JOHNSON
Attorneys
Department of Justice
Washington, D.C. 20530

MISSISSIPPI HOUSE DISTRICTS (COURT ORDER SEPTEMBER 8, 1976) IN WHICH THE UNITED STATES RECOMMENDS SPECIAL ELECTIONS

PERMANENT PLAN			TEMPORARY PLAN			
Dist. #	Blk. Pop. %	Blk.[1] VAP %	Dist. #[2]	Blk. Pop. %	Blk.[1] VAP %	Applicable Criteria
3	67.7	62.0	3(3)	45.9		1
8	74.2	68.2	11(4)	64.2	57.6	1
10	53.5		9(2)	47.9		1
15	57.4	50.8	11(4)	64.2	57.6	1
16	62.1	55.6	11(4)	64.2	57.6	1
17	58.8	51.6	11(4)	64.2	57.6	1
22	70.0	62.0	13(2)	62.8	54.8	1
			14(3)	61.4	53.3	
24	68.9	60.7	14(3)	61.4	53.3	1
25	64.3	56.8	13(2)	62.8	54.8	1
26	60.9	52.3	13(2)	62.8	54.8	1
32	58.1	52.3	15(4)	54.8	49.4	1
33	56.1	50.6	15(4)	54.8	49.4	1
34	55.5		15(4)	54.8	49.4	1
37	68.6	62.8	17(3)	56.6	50.1	1
38	51.4		17(3)	56.6	50.1	1
			19(1)	40.4		
47	64.8	57.4	16(2)	66.8	59.4	1
			29(2)	56.2	49.6	
48	62.6	55.7	16(2)	66.8	59.4	1
49	69.2	60.1	16(2)	66.8	59.4	1
52	67.9	61.33	23(5)	38.4		1
56	50.7		29(2)	56.2	49.6	1
57	66.5	61.1	28(4)	42.0		1
79	55.4	50.00	24(4)	33.9		.1
81	74.9	70.5	30(3)	47.0		1
			32(2)	57.1	50.1	
82	52.8		32(2)	57.1	50.1	1
89	54.6	50.7	33(2)	47.9		1
97	60.65	54.2	34(2)	53.4	46.6	1
103	42.7		39(4)	22.1		1
105	40.1		39(4)	22.1		1
115	45.6		45 to	5.4 to		1
			45E(7)	34.3		1

Total special election districts—29

[1] Black VAP not shown where less than 50%.

[2] Size of multimember districts shown in parenthesis.

[Certificate of Service Omitted]

THE STATE OF MISSISSIPPI
DEPARTMENT OF AUDIT

September 28, 1976

[Filed Sept. 29, 1976]

Hon. J. P. Coleman, Judge
United States Fifth Circuit
Court of Appeals
Ackerman, Mississippi 39735

Dear Judge Coleman:

Upon my return to the state—ten days earlier than expected—I found that there was an error in the territory used in House Districts Nos. 98 and 99, involving Amite and Pike counties.

The latest map that I had procured for Pike County showed the territory used in the plan as submitted to the Court as being contiguous. However, after returning home I have had access to maps fortunately furnished by Hon. Ashley Atkinson and Hon. Thomas H. Walman, together with supporting documents, as well as more recent maps that I have been able to procure. These new maps, together with supporting data, show conclusively that the territory embraced in House District 99 is not contiguous.

Therefore, I make the following recommendation to the Court, which is in line with the suggestions made by Messrs. Atkinson and Walman as well as with that made by Hon. Frank R. Parker, Attorney for the Plaintiffs:

98.	Pike County: Beats 4 and 5;	
	Amite County: Beats 4 and 5	17,995
		—1.0
99.	Pike County: Beats 1, 2 and 3	19,269
		+6.0

Population figures used in this revised plan are the same as those submitted by Pike and Amite counties under

Section 5 of the Voting Rights Act of 1964, except for an adjustment of 26 persons omitted from the Pike County total in the said submission.

I deeply regret this error but I trust that this change will resolve the matter satisfactorily to all concerned.

Respectfully submitted,

/s/ W. D. Neal
WILLIAM D. NEAL
1137 St. Ann
Jackson, Mississippi 39202

cc: Hon. Dan M. Russell
Chief Judge
United States District Court
P. O. Box 1930
Gulfport, Mississippi 39501

Hon. William Harold Cox
United States District Judge
P. O. Drawer 2447
Jackson, Mississippi 39205

The Clerk
United States District Court
P. O. Box 769
Jackson, Mississippi 39205

Hon. A. F. Summer
Attorney General
State of Mississippi
Jackson, Mississippi 39205

Hon. Frank R. Parker
Attorney at Law
Lawyers' Committee for Civil
Rights Under Law
233 North Farrish Street
Jackson, Mississippi 39201

Hon. Gerald W. Jones
Civil Rights Division
U. S. Department of Justice
Washington, D.C. 20530

Hon. Ashley Atkinson
P. O. Box 155
McComb, Mississippi 39648

Hon. Thomas H. Walman
629 Lake Shore Drive
McComb, Mississippi 39648

WILLIAM D. NEAL
1137 St. Ann Street
Jackson, Miss. 39202

MEMO. FROM SPECIAL MASTER

HOUSE OF REPRESENTATIVES

DISTRICTS TO WHICH PLAINTIFF HAS ENTERED EXCEPTIONS

A. WHERE LACK OF "SUBSTANTIAL EQUALITY OF POPULATION AMONG THE DISTRICTS" IS CHARGED

District		Population	
16	Coahoma		17,017
	Plaintiff estimates population here at —13.6% variance from the norm. We do not accept this estimate as accurate.		
8	However, it has been found that in District 8 (parts of Tunica and Coahoma) there is a lack of contiguity. Therefore, we recommend substitution of the following alternates, which affect all three Districts in which Coahoma County is involved:		
8	Tunica County: Beats 1, 2, 3, and 4, plus the Armory Precinct in Beat 5	10,508	
	Coahoma County: Coahoma, Lula & Lyon Precincts in Beat 1; & Jonestown Precinct in Beat 3	6,305	16,813 —7.5
15	Coahoma County: Beat 2; & the Clarksdale Precincts in Beats 1 and 3		16,677 —8.2
16	Coahoma County: Beats 4 and 5; and Mattson Precinct in Beat 3		17,465 —3.9
22	Bolivar-Sunflower		
	Plaintiff estimates +10.4% variance here.		
23	Bolivar		
	Plaintiff estimates —10.8% variance here.		

District		Population
24	Bolivar	
	Plaintiff estimates —15.4% variance here.	
	The Special Master does not agree that Plaintiff's estimates are correct. It is recommended that these three districts remain unchanged.	
34	Washington County	
	Plaintiff estimates population here to be +11.0% variance from the norm. We must express doubt as to the accuracy of this estimate. We, therefore, recommend that this and other Washington County Districts remain unchanged.	
45	Lowndes County	
	Plaintiff estimates population here to be +12.0% variance from the norm. In his exceptions Plaintiff estimates population of Air Base to be only 2,229. Yet in the redistricting of the Beats of Lowndes County the Federal Court permitted the deduction of 4,074 "non-residents" at the Air Base in Beat 2 and 1,670 "non-residents" at the University in Beat 5 from both Beat and County totals and a net-population of only 43,956 was used in redistricting the county—an average of only 8,791 persons per Beat. But in this Legislative reapportionment we must use the entire 1970 population of the county. This population figure is 49,700 and we must use the resident population of the Air Base precinct and its "non-resident" population as well. It is apparent, therefore, that the objection to District 45 is without merit.	
53	Warren County	
	Plaintiff estimates —45.6% variance.	
54	Warren County	
	Plaintiff estimates +43.3% variance.	
55	Warren-Yazoo	
	Plaintiff estimates —20.96% variance.	

District		Population
56	Yazoo—Plaintiff estimates —16.3% variance.	
	The Plaintiff's estimates of population for the Precincts of Warren County are unrealistic and non-factual, based upon Precinct boundaries in effect in 1975.	
	A few examples:	
	In 1975 there were 12,862 votes cast for Governor. Thus, countywide, 28.6% of the population voted. Plaintiff's population estimates for the Precincts show that the following percentages of that population actually voted in the listed Precincts in 1975: Walters 9.4%; Auditorium 17.2%; Bovina 74.0% while its next-door neighbor, Tingle, voted only 10.8%; Beechwood 48.0%; Jett 44.6%; Redbone 10.1% while the adjacent Precinct of Yokena was 58.8%; Jonestown 52.3% and its neighbor, Goodrum, 15%.	
	The Special Master has rechecked the election returns from Warren County and has discovered a large error in the Jonestown Precinct. The vote here was actually 2,618 but in transcribing same the final digit of "8" was omitted, thus showing only 261 votes as having been cast there. This error of 2,357 votes translates into some 6,000 population.	
	All Precincts in Warren County have been recalculated and the following alternative districts are now suggested:	
53	Warren County: The Precincts of Yokena, Redbone, Goodrum, Tingle, Beechwood, Culkin, Kings, St. Aloysius, and American Legion (Blackburn)	16,928 —6.8%
54	Warren County: The Precincts of Jett, Fire Station No. 7 and Jonestown	16,492 —9.2%
	(Warren County reapportionment by Beats is on appeal to the Supreme Court).	

District			Population
55	Warren County: The Precincts of Bovina, Oak Ridge, Redwood, Walters, Brunswick, Cedar Grove, Auditorium and Central Fire Station;	11,561	
	Yazoo County: The Precincts of Dover, East Bentonia, West Bentonia, Phoenix, Mechanicsburg, Satartia, Fugate, Deasonville, and Valley	5,521	17,082 —6.0%
	(Yazoo County is in the process of reapportionment by Beats; hence we use Precincts).		
	Note: No changes are required in District 56 (Yazoo), or in District 47 (Sharkey and Yazoo) if these alternative plans for Districts Nos. 53, 54, and 55 (above) are used.		
60	Plaintiff's and the Department of Justice exceptions to District No. 60 were withdrawn last Friday, October 1 after acceptance by the Court of Special Master's alternative plan for Districts Nos. 60, 78 and 80 (Kemper and Lauderdale).		
85	Smith-Scott.		
	Plaintiff's exception withdrawn last Friday, October 1.		
99	Pike County.		
	Agreement of all parties was reached on this District last Thursday, September 30, by adoption by the Court of Special Master's alternative plan for Districts 98 and 99. (See letter under date of September 28, 1976).		
118 119 120 121 122	These are the Jackson County Districts which were laid out on Beat lines as set by Federal Court Order.		

B. WHERE A LACK OF PRECINCT LINES IS ALLEGED

District		Population
6	Alcorn	
7	Alcorn-Tishomingo	
	Exception withdrawn by Plaintiff upon discovery that Alcorn County has Beat lines.	
27	Tallahatchie	
39	Grenada-Tallahatchie	
48	Holmes-Humphreys	
49	Holmes	
92	Jefferson Davis-Covington	
102	Lamar-Covington	
	The areas involved in the Precincts in Holmes, Tallahatchie, and Covington Counties are well known to citizens and officials alike through custom and long usage.	

IN THE
UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

Civil Action No. 3830(A)

[Filed Oct. 8, 1976]

[Caption Omitted]

PLAINTIFFS' SUPPLEMENT TO MOTION TO ALTER OR AMEND JUDGMENT

Private plaintiffs, by their attorneys, hereby supplement their motion to alter or amend this Court's Judgment of September 8, 1976, filed September 20, 1976, by suggesting to the Court the following options and alternative plans, devised according to the criteria established by the Court, namely, based on 1970 Census data, with districts delineated exclusively by county lines, supervisors' district (beat) lines, and where necessary voting precincts, as alternatives to the districts devised by the Court and included in its orders of August 24, 1976, and September 8, 1976. These proposed alternatives are submitted in response to the letter from Honorable J. P. Coleman, Circuit Judge, to counsel for the plaintiffs, of September 22, 1976, in an effort to attempt to settle the differences among the parties in this long-standing case.

1. *Senate Plan.* Plaintiffs propose as an alternative to the court-ordered Senate plan, in accordance with the criteria established by the Court, the Modified Henderson Senate County Boundary Plan attached hereto as Exhibit A. This plan is based on Exhibit C to plaintiffs' motion to alter or amend judgment. All multi-member districts have been subdivided into single-member districts along beat and precinct lines. Where beats are used, we have used the current beat boundaries currently in use in each respective county. Where beat and precinct popula-

tion cannot be determined directly from Census data, we have estimated beat and precinct population based on 1970 Census enumeration districts.[1]

The modified Henderson plan provides 52 single-member districts with a total deviation of only 13.66 percent. Only 9 of the 52 districts have variances which exceed 5 percent, plus or minus. These variances are necessitated by adhering to the court-established criteria of delineating districts along county, beat, and precinct lines. The county lines of 67 counties are preserved intact without any fracturing of county lines (including Hinds, Harrison, and Jackson Counties, in which districts are formed within county boundaries). Only 15 counties are split up to create single-member districts which cross county lines.

In addition, black majority areas which are split up and divided in the Court's plan creating districtwide white majorities, such as Claiborne and Jefferson Counties, are not split up in the modified Henderson plan.

The Court's plan, by comparison, has a total deviation of 16.7 percent by the Court's figures, and 18.32 percent, by our figures which are based on 1970 Census data. Fifteen districts exceed a variance of 5 percent, plus or minus, by the Court's figures. The Court's plan fractures and splits up 19 counties.

Although our statistics based on 1970 Cenus data show that 14 districts in the Court plan are black population majority districts, as opposed to 13 districts in the modified Henderson plan, only 6 of the Court plan districts have 1975 black voting age population majorities. We estimate the 7 of the modified Henderson plan districts have 1975 black voting age population majorities.

2. *House Plan.* Without attempting completely to redraw the Court's House plan, we have attempted to make adjustments within the districts established by the Court's plan to cure the excessive population variances (over 10

[1] Districts 48, 49, 50, 51, and 52 are the same districts defined by the Court's plan; we accept the Court's figures although we have been unable to verify them using 1970 Census data. District 41 and 42 are slightly altered from the Court's plan; but again we accept the Court's figures.

percent, according to 1970 Census data). Our alternative districts are attached hereto as Exhibit B. While we have not been successful in reducing all the districts to the absolute minimum, because of the necessity to work within the confines of the Court plan, we believe that these districts represent considerable improvement over the Court-drawn districts. In some instances, in order to cure excessive deviations in objected-to districts, we have had to alter adjoining districts as well, but within the perimeters of the Court-ordered plan. The following chart shows the results of this work:

Objected-To District	Variance, Court Plan (Based on estimates from 1970 Census)		Variance, Plaintiffs' Alternative (1970 Census)
16	—13.6%		— 8.40%
23	—10.8%		— 2.08%
24	—15.4%		—10.9%
		Alternative 1	Alternative 2
34	+11.0%	—4.34%	—3.50%
45	+12.0%		— 4.18%
53	—45.63%		— 7.61%
54	+43.25%		— 2.90%
55	—20.96%		— 6.64%
56	—16.3%		—10.97%

As previously indicated, we also accept Special Master W. D. Neal's suggested alternative proposal for House Districts 60, 78, 79, and 80.

3. *Special Elections.* Should the Court alter its Senate plan or House plan to incorporate all or any of these suggested alternative plans, we amend our motions for special elections to include any new black majority districts accepted by the Court for the reasons set out in our motions.

Respectfully submitted,

/s/ Frank R. Parker
FRANK R. PARKER
Lawyers' Committee for
Civil Rights Under Law
233 North Farish Street
Jackson, Mississippi 39201

Attorney for Plaintiffs

[Certificate of Service Omitted]

EXHIBIT A

MODIFIED HENDERSON SENATE COUNTY BOUNDARY PLAN

Based on 1970 Census Data

Senate District	Description	Total Pop.	Variance	Black Pop.	Percent Black
1	Alcorn County;				
	Tishomingo County	42,119	-1.20%	3,859	9.2%
2	Benton County;				
	Tippah County;				
	Union County	42,453	-0.41%	8,674	20.4%
3	Marshall County;				
	Tate County	42,571	-0.14%	23,651	55.6%
4	DeSoto County;				
	Tunica County: Beats 1, 2, 3, and 5	45,385	6.46%	19,255	42.4%
5	Coahoma County;				
	Tunica County: Beat 4	42,801	0.39%	27,983	65.4%
6	Panola County;				
	Quitman County	42,717	0.20%	22,873	53.5%
7	Lafayette County;				
	Pontotoc County	41,544	-2.55%	9,802	23.6%
8	Lee County: Beats 1, 2, 3, and 4				
	Prentiss County: Beat 3	40,643	-4.67%	8,186	20.1%
9	Itawamba County;				
	Lee County: Beat 5;				
	Prentiss County: Beats 1, 2, 4, and 5	42,440	-0.45%	4,667	11.0%
10	Bolivar County: Beats 1, 2, 3, 4, and Boyle precinct	43,979	3.16%	26,501	60.3%
11	Sunflower County;				
	Bolivar County: Beat 5 less Boyle precinct	42,477	-0.36%	27,098	63.8%

281

Senate District	Description	Total Pop.	Variance	Black Pop.	Percent Black
12	Tallahatchie County;				
	Leflore County: Beats 1 and 2, West Greenwood, Schlater precincts	40,807	-4.28%	20,802	51.0%
13	Holmes County;				
	Leflore: Beats 4 and 5, Central Greenwood precinct	43,762	+2.65%	30,947	70.7%
14	Carroll County;				
	Grenada County;				
	Yalobusha County	41,166	-3.43%	18,275	44.4%
15	Calhoun County;				
	Chickasaw County;				
	Webster County	41,475	-2.71%	12,042	29.0%
16	Oktibbeha County;				
	Clay County: Beats 3, 4 and 5	40,282	-5.51%	15,462	38.4%
17	Monroe County;				
	Clay County: Beats 1 and 2	41,353	-3.00%	14,247	34.5%
18	Attala County;				
	Choctaw County;				
	Montgomery County	40,928	-3.99%	16,056	39.2%
19	Noxubee County;				
	Winston County;				
	Lowndes County: Beat 4	41,554	-2.53%	22,663	54.5%
20	Lowndes County, less Beat 4	40,840	-4.20%	10,168	24.9%
21	Washington County: Beats 2, 3 and 4, less Arcola precinct	41,292	-3.15%	22,010	53.3%

Senate District	Description	Total Pop.	Variance	Black Pop.	Percent Black
22	Sharkey County;				
	Issaquena County;				
	Washington County: Beats 1 and 5, Arcola precinct	40,963	-3.92	23,932	58.4%
23	Humphreys County;				
	Yazoo County	41,904	-1.70%	24,039	57.4%
24	Warren County	44,981	5.51%	18,355	40.8%
25-29	Hinds County*	214,964	0.84%	84,064	39.1%
30	Madison County;				
	Rankin County: Beats 2 and 4, less Shiloh, Crossroads and South Pelahatchie precincts	45,206	+6.04%	NA	NA
31	Smith County;				
	Rankin County: Beats 1, 3 and 5, Shiloh, Crossroads and South Pelahatchie precincts	41,904	-1.71%	NA	NA
32	Kemper County;				
	Neshoba County;				
	Leake County: Beats 1, 2, 3, and 5	44,307	3.93%	14,614	33.0%
33	Newton County;				
	Scott County;				
	Leake County: Beat 4	44,165	3.59	13,427	30.4%
34	Lauderdale County: Beats 1, 3 and 4, less Jones Store and Clarksdale precincts	40,888	-4.09%	9,696	23.7%
35	Clarke County;				
	Lauderdale County: Beats 2 and 5, Jones Store, Clarksdale precincts	41,248	-3.25%	16,330	39.6%

* Subject to outcome of appeal in Kirksey v. Board of Supervisors of Hinds County.

Senate District	Description	Total Pop.	Variance	Black Pop.	Percent Black
36	Claiborne County; Copiah County; Jefferson County	44,130	3.51%	26,955	61.1%
37	Adams County; Franklin County	45,304	6.26%	20,974	46.3%
38	Amite County; Wilkinson County; Pike County: Beats 1, 2 and 5	42,990	0.84%	22,594	52.6%
39	Lincoln County; Pike County: Beats 3 and 4	39,826	-6.58%	13,709	34.4%
40	Lawrence County; Simpson County; Walthall County	43,584	2.23%	14,926	34.2%
41	Jefferson Davis County; Covington County; Jones County: Beat 5, County Barn and Ellisville Courthouse precincts	42,306	0.77%	NA	NA
42	Jones County: Beats 1, 2, 3, and 4, less Ellisville Courthouse and County Barn precincts	40,989	-3.9%	NA	NA
43	Greene County; Jasper County; Wayne County	41,189	-3.39%	14,764	35.8%
44	Lamar County; Marion County; Pearl River County: Beat 2	43,705	2.51%	NA	NA

Senate District	Description	Total Pop.	Variance	Black Pop.	Percent Black
45	Hancock County; Pearl River County: Beats 1, 3, 4, and 5	39,564	-7.20%	NA	NA
46	Forrest County, less Beat 5	44,109	3.46%	12,937	29.3%
47	George County; Perry County; Stone County; Forrest County: Beat 5	43,365	1.72%	6,912	15.9%
48	Harrison County: the City of Gulfport and Precinct 11 in the City of Biloxi	45,208	+6.0%		
49	Harrison County: all of the City of Biloxi except Precinct 11	44,069	+3.4%		
50	Harrison County: all that part outside the Cities of Biloxi and Gulfport	45,305	+6.3%		
51	Jackson County: all that part outside the Cities of Moss Point and Pascagoula plus the Precinct of Bayou Casotte No. 4	44,269	+3.8%		
52	Jackson County: the City of Moss Point; all of the City of Pascagoula except the precinct of Bayou Casotte No. 4	43,706	+2.5%		

EXHIBIT B. PLAINTIFFS' SUGGESTED ALTERNATIVE HOUSE DISTRICTS

1. Tunica and Coahoma Counties.

House District	Description	Total Pop.	Variance	Black	% Black
8	Tunica County (less Two Mile Lake Precinct); Coahoma County: Precincts of Lula (1-1) Friars Point (2-1) Farrell (2-2) Sherard (2-3)	16,808	-7.53%	12,369	73.59%
15	Coahoma County: Beat 3 Coahoma (1-2) Lyon (1-3) Clarksdale (1-4) Clarksdale (2-4)	17,503	-3.68%	8,564	48.93%
16	Coahoma County: Beats 4 and 5	16,644	-8.40%	12,514	75.19%

District 17 remains unchanged

2. Bolivar and Sunflower Counties.

House District	Description	Total Pop.	Variance	Black	% Black
22	Bolivar County: Precincts of Duncan Alligator Shelby Mound Bayou Gunnison Rosedale	16,259	-10.52%	12,621	77.67%
23	Bolivar County: Precincts of Merigold E. Cleveland E. Central Cleveland Central Cleveland W. Cleveland N. Cleveland	17,793	- 2.08%	7,475	42.01%
24	Bolivar County: Precincts of Shaw Boyle Skene Longshot Strongtown Scott Benoit Pace Sunflower County: Precinct of Fairview-Hale	16,189	-10.9%	10,386	64.20%
25	Sunflower County: Precincts of Inverness Indianola (1) Moorhead Indianola (2) Sunflower Indianola (3) Heathman	18,011	- 0.08%	12,221	67.85%
26	Sunflower County: Precincts of Boyer Doddsville Linn Ruleville Dockery Drew Rome Indianola (2)	18,204	+ .18%	10,462	57.5%

3. Issaquena and Washington Counties

ALTERNATIVE ONE

House District	Description	Total Pop.	Variance	Black	% Black
32	Issaquena County Washington County: Precincts of Glen Allan (1-4) Avon (2-3) Wayside (1-3) Hollandale (5-1) Darlove (5-2) Arcola (2-4) Ward's Rec. Center (2-1)	18,165	- 0.03%	10,015	55.13%
33	Washington County: Precincts of Italian Club (3-1) Episcopal Church (1-2) Community Center (2-2) County Rec. Center (5-4)	19,376	+ 6.63%	7,184	37.08%
34	Washington County: Precincts of Brent Center (3-2) Police Station (3-3) Extension Bldg. (1-1) American Legion (3-4)	17,383	- 4.34%	10,831	62.31%
35	Washington County: Precincts of Leland City Hall (4-2) Leland Light Plant (4-3) Industrial Center (5-5) County Barn (4-1) Bourbon (5-3)	18,394	+ 1.22%	12,128	65.93%

ALTERNATIVE TWO

House District	Description	Total Pop.	Variance	Black	% Black
32	Issaquena County Washington County: Precincts of Glen Allan (1-4) Arcola (2-4) Leland City Hall (4-2) Hollandale (5-1) Darlove (5-2) Bourbon (5-3)	18,565	+2.17%	12,097	65.16%
33	Washington County: Precincts of Episcopal Church (1-2) Wayside Laundry (1-3) Ward's Rec. Center (2-1) Avon (2-3) Italian Club (3-1) County Rec. Center (5-4)	18,610	+2.42%	4,672	25.10%
34	Washington County: Precincts of Extension Building (1-1) Community Center (2-2) Brent Center (3-2) Police Station (3-3)	17,534	-3.50%	11,657	66.48%
35	Washington County: Precincts of County Barn (4-1) Leland Light Plant (4-3) American Legion (3-4) Industrial Center (5-5)	18,609	+2.41%	11,732	63.04%

4. Lowndes County

House District	Description	Total Pop.	Variance	Black	% Black
45	Lowndes County: Precincts of Airbase Caledonia Rural Hill School New Hope School Fairview School Coleman Elem. School Caldwell School	17,412	-4.18%	4,753	27.30%
46	Lowndes County: Precincts of Brandon School Lee High School Stokes Beard Sale School Franklin School Hunt School	17,716	-2.50%	5,951	33.60%

5. Sharkey, Humphr' s Beat 5, Yazoo, and Warr Counties

House District	Description	Total Pop.	Variance	Black	% Black
47	Sharkey County Humphreys County: Beat 5 Yazoo County: Precincts of Eden Free Run West Midway East Midway Harttown Holly Bluff Carter Lake City	16,357	-9.98%	10,748	65.71%
53	Warren County: Precincts of Yokena Jett Jonestown Fire Station No. 7 Redbone Goodrum Beechwood	16,788	-7.61%	4,706	28.0%
54	Warren County: Precincts of American Legion Central Fire Station St. Aloysius Auditorium Walters Brunswick	17,643	-2.90%	10,459	59.28%
55	Warren County: Precincts of Tingle Culkin Bovine Kings Cedar Grove Oak Ridge Redwood Yazoo County: Precincts of Satartia Phoenix Mechanicsburg West Bentonia Dover Benton Deasonville Fugates	16,965	-6.64%	6,691	39.44%
56	Yazoo County: Precincts of South City Hall Valley Robinette Center Ridge Zion West Lintonia East Lintonia East Court House West Court House North City Hall Enola Fairview	16,177	-10.97%	7,855	48.56%

[SEAL]

LAWYERS' COMMITTEE
FOR CIVIL RIGHTS UNDER LAW

[Filed Oct. 21, 1976]

October 19, 1976

Honorable J. P. Coleman
United States Circuit Judge
Post Office Box K
Ackerman, Mississippi 39735

Honorable Harold Cox
United States District Judge
Post Office Drawer 2447
Jackson, Mississippi 39205

Honorable Dan M. Russell
United States District Judge
Post Office Box 1930
Gulfport, Mississippi 39501

Re: *Connor* v. *Finch*, Civil No. 3830(A)

Dear Judges Coleman, Cox and Russell:

At our last conference on October 7, the Court requested plaintiffs to provide the Court with a list of those Senate districts which were majority white under the 1975 temporary plan and which are majority black under the Court's permanent plan. A list of the majority black districts under the Court's plan is attached as Exhibit A. The first column lists the old, 1975 temporary districts, and the second column lists the counties included in those districts, with the number of senators elected from each district in parenthesis. The third and fourth columns list the racial percentages by 1975 estimated voting age population (VAP), according to Prof. Ellan Bryant's *Population of Mississippi Legislative and Congressional Districts, 1970, and Projections to 1975* (Miss. State University, 1973) (Ex. P-13).

Column five lists the new majority black districts included in the Court's permanent plan, column six lists the percent black according to 1970 Census statistics, and column seven lists the estimated percent black in the 1975 voting age population, based on Prof. Bryant's projections.

According to these figures, two districts, old Districts 9 and 25, were majority white in 1975, and a third district, District 12, was almost 50-50. Of the new districts carved out of old Districts 9 and 25, new Districts 12, 38, and 39 are majority black according to 1970 Census statistics. These estimates show that new District 38 also is majority black in 1975 voting age population. Of the new districts carved out of old District 12, new Districts 16 and 17 are both majority black in population (1970 Census), and District 16 also is majority black in 1975 voting age population.

We have also included a chart, Exhibit B, comparing these factors for the proposed Modified Henderson Senate Plan.

Plaintiffs believe, however, that these racial percentages are not the only factor the Court should consider in ordering special elections for the Mississippi Senate. The Court should also consider that the 1975 plan districts discouraged black candidates from running and disadvantaged black voters in these majority black counties because the districts were extremely large in geographic area making campaigning difficult and expensive, and because in the multi-member districts, as the number of legislative seats increased and the number of candidates increased, voters had difficulty making intelligent choices among the plethora of candidates, ballots became too unwieldly, confusing, and lengthy for intelligent consideration, and residents of the multi-member districts feel that they have no legislators directly responsible to them. See *Chapman* v. *Meier*, 420 U.S. 1, 15-16, 95 S.Ct. 751, 42 L.Ed.2d 766 (1975). Accordingly, we urge the Court to order special senatorial elections in all majority black districts which have been carved out of the old multi-member districts.

Next, at our last conference the Court requested an expression of views whether special elections in majority

black districts for both House and Senate in which there are no incumbent legislators should be restricted only to the majority black districts involved, necessitating an increase in the number of seats in the House or Senate, or whether special elections should be held throughout the area formerly included within the old district. On reflection and after discussion with our clients, we believe that the Court should order the latter, that is, special elections throughout the area formerly included within the old district.

On May 18, 1971, this Court rejected the proposed legislative reapportionment plans proffered by plaintiffs and also *struck down* the plan enacted by the Mississippi Legislature in part because both sets of plans purported to increase the number of seats in both the House and Senate. At that time this Court held that "neither the Legislature nor this Court" were authorized to increase the number of seats in either house:

> "The size of the legislative body is a matter left solely to the discretion of the State. Neither the Legislature nor this Court is authorized to interfere with the size of the State Senate or of the State House of Representatives as ordained by the people in the State Constitution, Reynolds v. Sims, *supra*, 377 U.S. at 580, 84 S.Ct. 1362.
>
> In our former decision, 265 F. Supp. at 494, we held that the legislative reapportionment of December 1, 1966, was unconstitutional on its face, null, and void. This alluded *not to the size of the two houses*, as ordained by a vote of the people on the Constitutional Amendment of 1962, but applied only to the distribution of the prescribed number of legislative seats among the 2,178,141 inhabitants of Mississippi as enumerated in the Census of 1960. Section 254 of the Mississippi Constitution, as amended by a vote of the people in 1963, provides that the House shall be composed of 122 members. Section 255 of the Constitution, as so amended, provides that the number of Senators shall be 52.
>
> A reading of House Bill No. 515, of the Laws of Mississippi of 1971, the statute presently under con-

> sideration reveals that the Legislature, believing it had the authority to do so because of our prior decision, sought to raise the membership of the Mississippi Senate from 52 to 55 and the membership of the Mississippi House of Representatives from 122 to 125." *Connor* v. *Johnson*, 330 F. Supp. 506, 507-08.

This holding was left undisturbed on appeal, and thus is *res judicata*. We believe the Court at this time lacks the authority to depart from its prior ruling.

Further, there are a number of practical reasons why the membership of the House and Senate should not be increased. Any increase in the number of seats, for example, in the House of Representatives, would diminish black voting strength in that body. Presently blacks have four representatives out of 122, 4/122, or 3.278 percent. An increase of one black representative, without any change in the number of seats, would give blacks 5/122, or 4.098 percent. Each black increase without any change in the membership equals 0.819 percent.

However, if the number of seats were increased to 123, an increase of one black representative would equal 5/123, only 4.065 percent, or less than if the number of seats were left unchanged. Each additional black representative with a corresponding increase in the number of seats would represent an increase of only 0.813 percent. As the number of additional black representatives and additional seats increase, the gap grows larger. For example, if six additional black representatives were elected without any additional seats, black voting strength would be 10/122, or 8.196 percent. However, if six additional black representatives were elected with an increase of six House seats, black voting strength would be only 10/128, or 7.812 percent. As these statistics show, each increase in the total membership of the House actually decreases proportional black voting strength in that body.

There are other practical difficulties, for example, the seating structure and the electronic voting mechanisms

of both bodies are designed for only 122 members in the House and 52 in the Senate.

Accordingly, for these reasons, we believe special elections throughout the old districts are constitutionally required and necessary. We do not wish to impose additional burdens on the incumbent members, but we do not see any other solution to this problem.

We also wish to bring two other matters to the Court's attention. First, plaintiff Henry J. Kirksey has designed a Hinds County Senate plan which is based exclusively on existing precincts and which eliminates the dilution which exists in the present plan. This plan could be implemented this year without awaiting the outcome of the Hinds County redistricting case, and we attach it as Exhibit C for the Court's consideration.

Second, there is a minor typographical error in Plaintiffs' Supplement to Motion to Alter or Amend Judgment, filed October 8, 1976. In our proposed alternative House plan for Sunflower County, District 25, the precinct of "Indianola (2)" should be deleted from District 25. That precinct is correctly listed for District 26.

If the Court should reject our proposed alternative proposals for the Senate and/or House, in whole or in part, then plaintiffs desire to renew their motion for an evidentiary hearing on their motion to alter or amend this Court's judgment of September 8, 1976 (which includes both the House and Senate plans).

Thank you for your consideration of these matters.

Yours very truly,

/s/ Frank R. Parker

FRP:ljh

cc: A. F. Summer, Esquire
Gerald W. Jones, Esquire
Clerk, U.S. District Court

EXHIBIT A. Racial Composition of Old and New Senatorial Districts, Court's Plan.

Old District	Counties	1975 VAP 1/ White %	Black %	New District	% Black (1970 Census)	% Black Est. 1975 VAP 2/
9	Quitman Tate Tunica (1)	54.73%	45.27%	12	57.1%	45%
10	Coahoma (1)	43.36%	56.64%	13	63.9%	56%
11	Bolivar	47.95%	52.05%	14	59.6%	49.5%
	Sunflower (2)			15	64.4%	55%
12	Humphreys	49.66%	50.34%	16	57.4%	52%
	Washington (2)			17	55.1%	48%
15	Holmes	48.23%	51.77%	28	62.0%	52%
	Issaquena Madison			29	60.8%	52%
	Sharkey Yazoo (2)					
25	Adams	52.63%	47.37%	38	55.6%	51%
	Amite Franklin			39	51.3%	44%
	Jefferson Wilkinson (2)					

1/ E. Bryant and S. El-Attar, Population of Mississippi Legislative and Congressional Districts, 1970, and Projections to 1975 (Ex. P-13).

2/ Based on 1975 projections, Ex. P-13.

EXHIBIT B. Racial Composition of Old and Proposed Senatorial Districts, Modified Henderson Plan.

Old District	Counties	1975 VAP White %	Black %	New District	Description	% Black (1970 Census)	% Black Est. 1975 VAP
1	Desoto Lafayette Marshall (2)	72.47%	27.53%	3	Marshall Tate	55.6%	44%
8	Panola Yalobusha (1)	61.06%	38.94%				
9	Quitman Tate Tunica (1)	54.73%	45.27%	6	Panola Quitman	53.5%	44%
10	Coahoma (1)	43.36%	56.64%	5	Coahoma Tunica, Beat 4	65.4%	NA
11	Bolivar Sunflower (2)	47.95%	52.05%	10	Bolivar, Beats 1, 2, 3, 4, and Boyle	60.3%	NA
				11	Sunflower Bolivar, Beat 5 (less Boyle)	63.8%	NA
13	Leflore (1)	50.98%	49.02%	12	Tallahatchie Leflore, Beats 1 and 2, W. Greenwood, Schlater	51.0%	NA
14	Grenada Tallahatchie (1)	58.45%	41.55%				
15	Holmes Issaquena Madison Sharkey Yazoo (2)	48.23%	51.77%	13	Holmes Leflore, Beats 4 and 5, Central Greenwood	70.7%	NA
17	Neshoba Winston (2)	72.88%	27.12%	19	Noxubee Winston Lowndes, Beat 4	54.5%	NA
18	Noxubee Oktibbeha (1)	66.63%	33.37%				
6	Chickasaw Clay Lowndes (2)	70.24%	29.76%				

NA - Not Available

12	Humphreys Washington (2)	49.66%	50.34%	21	Washington, Beats 2, 3 and 4 (less Arcola)	53.3%	NA
15	Holmes Issaquena Madison Sharkey Yazoo (2)	48.23%	51.77%	22	Sharkey Issaquena Washington, Beats 1 and 5, Arcola	58.4%	NA
				23	Humphreys Yazoo	57.4%	48%
24	Claiborne Copiah Lincoln Simpson (2)	63.46%	36.54%	36	Claiborne Copiah Jefferson	61.1%	55%
25	Adams Amite Franklin Jefferson Wilkinson (2)	52.36%	47.37%	38	Amite Wilkinson Pike, Beats 1, 2 and 5	52.6%	NA
26	Pike Walthall (1)	63.62%	36.38%				

EXHIBIT C. Hinds County Senate Plan

Senate District	Beat	Description Precinct	Total Pop.	Norm Variance	Black Pop.	Percent Black
31	1	35-38,42-45,79,TP				
	2	12-17,32-34				
	5	5-6,8-9	43,222	+1.5%	5,708	13.2%
32	1	23,27,29,39,40-41, 80-83, CY, LG				
	2	11,21-25,28,30-31, FC,PH				
	4	26	43,101	+1.2%	24,059	55.8%
33	3	51,58				
	4	18-20,52,56-57				
	5	1-2,4,10,47,50,53,63-64	43,128	+1.3%	31,470	73.0%
34	3	59,66-71,73-76,BC,FF, FH,HI,RH,WH				
	4	54-55,60-62				
	5	49,72,77	43,027	+1.1%	2,505	5.8%
35	1	BR,PO,TI				
	2	BO,ED,NC				
	3	BY,CA,LE,U1,U2				
	4	C1,C2,C3,MI,R1,R2,V1,V2				
	5	CH,DG,OB,TE	42,495	-1.2%	20,322	47.8%

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI JACKSON DIVISION

Civil Action No. 3830(A)

[Filed Oct. 22, 1976]

[Caption Omitted]

OBJECTIONS OF THE UNITED STATES TO PLANS FOR THE REDISTRICTING OF THE MISSISSIPPI SENATE AND HOUSE OF REPRESENTATIVES CONTAINED IN THE COURT ORDERS OF AUGUST 24 AND SEPTEMBER 8, 1976

The United States hereby submits and files with the Court the following objections and comments with respect to the plans for redistricting the Mississippi Senate and House of Representatives contained in the Orders of August 24 and September 8, 1976, respectively. As we indicated in our papers filed with the Court previously in response to its request for suggestions on where special elections should be held, our interest arises primarily from the Voting Rights Act and the protections it entails.

The Senate

The districts contained in the Court's plan for the redistricting of the Mississippi Senate are substantially divisions of old multi-member districts some of which had combined majority black voting age population (hereinafter VAP) counties with majority white VAP counties to form majority white or near majority white VAP districts. The Court's plan consists entirely of single-member districts and contains nine majority BVAP districts, four of which are over 54% BVAP.* The plan perpetuates dilution of black voting strength in several

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* The percentage which Rims Barber testified is significant in evaluating the effectiveness of black voting strength in Mississippi. His tesitmony has not been contradicted.

districts where dilution could have been easily avoided. On the other hand, the Senate Restricted Fractionalization Plan (hereinafter SRFP) submitted by the United States has twelve majority BVAP districts, eight of which are over 54% BVAP. While the plan does not meet the standards of a court-ordered plan because of a number of multi-member districts contained therein, it does meet the Court's criteria of avoiding excessive fractionalization of county lines and observing existing precinct lines and it illustrates the existence of an adaptable alternative. Accordingly, the United States must object to those districts which result from the subdivision of a multi-member district created by combining a BVAP county with a white VAP county in such a way as to unnecessarily dilute black voting strength in the resultant single-member districts (Districts 2, 37, 38 and 39, which are less than 50% BVAP and Districts 14, 16, 17 and 29, which are less than 54% BVAP). In addition, the United States objects to District 12 (less than 54% BVAP) and Districts 19 and 22 (less than 50% BVAP) as dilutive single-member districts resulting from the manner in which BVAP counties are combined with other counties or portions of other counties.

Aside from objections to these 11 specific districts, another problem with the Court's plan for the Senate as well as the House of Representatives is that the use of supervisor district lines tends to dilute black voting strength in areas of black concentration in that supervisor district lines in many instances fragment black population concentrations in attempting to equalize road mileage among supervisor districts. *See, e.g., Kirksey* v. *Board of Supervisors of Hinds County*, C.A. No. 4939, S.D. Mississippi. While we believe there is serious questions as to whether a county can minimize the black voting strength in Mississippi by dividing up black concentrations to equalize road mileage in a county supervisorial reapportionment, we submit that there is absolutely no basis for justifying a minimization of black voting strength on the basis of road mileage in a state legislative reapportionment. In spite of this factor, however, we believe that the modified Henderson Plan pro-

posed by the Plaintiffs or the SREP, if modified so as to subdivide the five multi-member districts in that plan, would sufficiently correct the dilution problem even though they, too, rely on existing supervisor districts to some extent.

The House of Representatives

One immediately discernible deviation problem, and the only one to which we will directly address ourselves, is that involving Districts 53 and 54 in Warren County which indicates a deviation range of ±88.88%. Even given the problem of utilizing 1970 Census data for districts drawn in 1976 this deviation exceeds the standards set down by the Supreme Court. However, we believe the alternative submitted by Plaintiffs adequately corrects this problem and we urge the Court to adopt that proposal.

From the dilution standpoint, the most troublesome feature of the Court's House plan is the formulation of districts within populous counties which contain a substantial black population. Some districts, as drawn, have the effect of fragmenting black population concentrations into two or more districts, thus diluting the black voting strength. Primarily these districts result from the division of existing multi-member districts and our analysis shows that available alternatives, as suggested below, would not have such a dilutive effect. (All Black VAP percentages and deviation percentages are Department of Justice estimates based on 1970 Census data.)

Districts 8, 15 and 16 (Tunica and Coahoma Counties).

Court Dist. #	Blk. VAP %	Deviation %
8	68.2	+ 0.8
15	50.8	— 7.9
16	55.5	—12.3

Alternative districts proposed by Plaintiffs to reduce deviation also reduce the fractionalization and dilution of black voting strength within the counties involved and result in 67.6% and 68.6% Black VAP in alternate districts 8 and 16.

Districts 32, 33, 34 and 35 (Issaquena and Washington Counties).

Court Dist. #	Blk. VAP %	Deviation %
32	52.3	— 4.7
33	52.6	— 5.7
34	49.9	+10.6
35	48.3	+ 2.4

Alternative districts (Alternative 2) proposed by Plaintiffs to reduce deviation also reduce the fractionalization and dilution of black voting strength involved within these counties and result in 59.4%, 61.8% and 57.5% black VAP in alternate districts 32, 34 and 35.

Districts 36, 37 and 38 (Leflore, Carroll and Attala (pt.) Counties).

Court Dist. #	Blk. %	Blk. VAP %	Deviation %
36	49.2		+5.1
37		62.8	—8.2
38	51.35		—6.1

United States' alternative districts (see Exhibit "A" attached) reduce the fractionalization and dilution of black voting strength within the counties and result in 61.3% and 51.8% black VAP in districts 36 and 37 while reducing the deviation range for the districts from ±13.3% to ±7.8%.

Districts 47, 53, 54, 55, 56 (Sharkey, Warren, Yazoo and Humphreys (pt.) Counties).

Court Dist. #	Blk. %	Blk. VAP %	Deviation %
47		57.4	— 1.3
53	—	—	—45.63
54	49.3		+43.25
55	39.8		—14.7
56	50.7		—16.3

Alternative districts proposed by Plaintiffs to reduce deviation also reduce the fractionalization and dilution of black concentrations involved within these counties and

achieve 58.3% and 56.6% black VAP in alternate districts 47 and 54.

Districts 60, 78, 79, 80 and 87 (Kemper, Lauderdale, Clarke and Jasper (pt.) Counties).

Court Dist. #	Blk. VAP %	Deviation %
60	—	+12.0
78	—	+ 1.0
79	50.03	+15.5
80	—	+ 2.7
87	—	— 8.1

United States' alternative districts (see Exhibit "B" attached), utilizing Court districts 60 and 78 as modified by the Special Master to reduce deviation, reduce the dilution of black voting strength within Lauderdale County and result in a 55.6% black VAP in district 79 while reducing the deviation range from 23.6% to 8.7%.

Districts 86, 93, 94 and 95 (Jones and Jasper (pt.) Counties).

Court Dist. #	Blk. %	Blk. VAP %	Deviation %
86	—	—	+1.1
93	18.7	—	—7.6
94	33.6	—	+2.5
95	—	—	—4.3

United States' alternative districts (see Exhibit "C" attached) reduce the fractionalization and dilution of black voting strength within Jones County and result in a 52.6% black majority in district 94 while reducing the deviation range from 10.1% to 6.5%.

Districts 88 and 89 (Adams County).

Court Dist. #	Blk. %	Blk. VAP %	Deviation %
88	42.8	—	+5.5
89		50.7	—1.7

United States' alternative districts (see Exhibit "D" attached) reduce the fractionalization and dilution of

black voting strength within Adams County and result in a 59.5% black VAP in district 89 while maintaining deviation of less than ±8.0%.

Districts 92, 100, 101 and 102 (Covington, Jefferson Davis, Walthall and Lamar Counties).

Court Dist. #	Blk. %	Blk. VAP %	Deviation %
92	43.8	—	+12.8
100	—	—	+ 1.1
101	—	—	+ 7.8
102	—	—	+ 8.6

United States' alternative districts (see Exhibit "E" attached) reduce the fractionalization and dilution of voting strength within the counties and result in a 50.9% black majority in district 92 while reducing the deviation range from between +1.1% and +12.8% to between +1.95 and +9.9%.

Districts 103, 104, 105 and 106 (Forrest and Pearl River Counties).

Court Dist. #	Blk. %	Blk. VAP %	Deviation %
103	29.7	—	—3.7
104	—	—	—3.4
105	43.7	—	—2.0
106	—	—	—4.4

United States' alternative districts (see Exhibit "F" attached) reduce the fractionalization and dilution of black voting strength within Forrest County and result in a 61.96% black VAP in district 103 with deviation increased to only 11.7%.

* * * *

Aside from the above problem areas the United States would comment on the following:

Districts 22, 23, 24, 25 and 26 (Bolivar and Sunflower Counties).

From a dilution standpoint, the United States would not object to the Court's districts as drawn, or to Plain-

tiffs' suggested alternative districts as prepared to reduce deviation. Since the Plaintiffs' alternative does reduce the deviation, however, the Court may wish to adopt it in furtherance of the stricter standards by which a court-fashioned plan must be drawn.

Districts 98 and 99 (Pike and Amite (pt.) Counties).

The United States joins in the proposal by Plaintiffs and the Special Master to resolve the contiguity problem existent in district 99.

Finally, as indicated to the Court during the October 1, 1976, informal conference, the United States withdraws its proposal for special elections in House district 49, which we now understand will be represented by a black representative, Mr. Robert Clark. Since Mr. Clark was elected from a previously existing two member district with a 59% BVAP and the two resulting single-member districts have BVAP's of 55.7% and 60% (the latter being Representative Clark's district), we believe that dilution arguments fail here. Accordingly, we likewise withdraw our proposal for special elections in district 48. In addition, we ask that special elections be held in any district resulting from alterations in the plans based upon suggestions of the parties if those districts meet the criteria set forth in our memorandum proposing special elections for Mississippi House of Representatives.

Respectfully submitted,

/s/ Gerald W. Jones
GERALD W. JONES
MICHAEL D. JOHNSON
Attorneys
Department of Justice
Washington, D.C. 20530

ROBERT E. HAUBERG
United States Attorney

Exhibit "A"

Leflore, Carroll and Attala(pt.) Counties

House District	Description	Total Pop.	Black Pop.	% Black	% Black VAP	Deviation %
36	Leflore County Precincts of Minter City Money West Greenwood Schlater North Itta Bena South " " Morgan City Sidon	17,541	11,767	67.08	61.28	-3.47
37	Leflore County: Precincts of North Greenwood East " South " Central "	18,296	10,530	57.55	51.75	+0.69
38	Carroll County: Attala County: Beat 3, minus Possumneck Leflore County: Precincts of Southeast Greenwood Southwest " Northeast " Rising Sun	16,510	7,122	43.1		-9.14

Exhibit "B"

Lauderdale, Kemper, Clarke and Jasper (pt) Counties

House District	Description	Total Pop.	Black Pop.	% Black	% Black VAP	Deviation
60 and 78	As modified by Special Master					
79	Lauderdale County: Meridian City Precincts 5,6,9 13,14,15	18,540	11,339	60.18	55.6	+3.68
80	Lauderdale County: All Precincts in Beat 3 outside the City of Meridan except Obadiah, Shucktown, Center Hill, and School Gap: All Precincts in Beat 4 except Meridan Pct. 13 All precincts in Beat 5 except Alamucha, Whynot, Center Grove, and Vimville	19,497				+7.29
87	Clarke County: Jasper County: Beat 2 Lauderdale County: Beat 5; Precincts of Alamucha, Whynot, Center Grove and Vimville	18,912				+4.08

Exhibit "C"

Jasper and Jones Counties

House District	Description	Total Pop.	Black Pop.	% Black	% Black VAP	Deviation
86	Jasper County: Beats 1,3,4 and 5 Jones County: Beat 1; Sandersville Pct. and Sharon Pct. Beat 3; Sandersville Pct.	16,996				-6.47
93	Jones County: Beat 1; except Rural and Sandersville and Sharon Pcts. Beat 2; less Harper's Transfer Pct. Beat 3; Anthony's Florist Pct.	17,078				-6.01
94	Jones County: Beat 2; Harper Transfer Pct. Beat 3; less Anthony's Florist, Sandersville, and Tuckers Pct. Beat 4; Fairgrounds Pct. Beat 5; City Barn Pct.	18,154	9,548	52.59		-.01
95	Jones County: Beat 3; Tucker Pct. Beat 4; less Fairgrounds Pct. Beat 5; less City Barn Pct.	17,078				-6.02

EXHIBIT "D"

Adams County

House District	Description	Total Pop.	Black Pop	% Black	% Black VAP	Deviation
88	Adams County: Beat 2 less Carpenter Pct. 1 Beats 3, 5	19,386	6,524	33	--	+6.68
89	Adams County: Beats 1, 4 Beat 2: Carpenter Pct. 1	17,936	11,341	62.23	59.47	-1.30

Exhibit "E"

Covington, Jefferson Davis, Walthall, and Lamar Counties

House District	Description	Total Pop.	Black Pop.	% Black	% Black VAP	Deviation%
92	Covington County Beats 4 and 5: Jefferson Davis County	18,527	9,436	50.93	45.36	+1.95
100	Walthall County: Marion County: Beats 2 and 3	19,793				+8.93
101	Marion County: Beats 1, 4 and 5 Lamar County: Beats 2 and 3	19,970				+9.90
102	Lamar County: Beats 1, 4 and 5 Covington County: Beats 1, 2 and 3	19,218				+5.76

Exhibit "F"

Forrest, Stone (Pt.), and Pearl River (Pt.) Counties

House District	Description	Total Pop.	Black Pop.	% Black	% Black VAP	Deviation
103	Forrest County: Beat 1, Pcts; Lillie Burney Central School Beat 2, Pcts; Jones Beat 3, Pcts; East Bowie Eaton Walthall Beat 4, Pcts; William Carey Rowan	17,427	11,697	67.09	61.96	-4.10
104	Forrest County: Beat 1, Pcts; Blair Woodly West Side Beat 2, Pcts; Rawls Springs Eatonville Beat 5, Pcts; Grace Christian Pine Crest	17,161				-5.56

105	Forrest County:		
	Beat 2, Pcts;		
	Petal High School		
	Petal - Leeville		
	Glendale		
	Beat 3, Pcts;		
	Macedonia		
	Sunrise		
	Petal-Harvey School		
	Beat 4, Pcts;		
	Camp		
	Hawkins		
	Beat 5, Pcts;		
	Davis		
	McLaurin		
	McCollum		
	Dixie Pine		
		18,906	+4.04

218

218B

Exhibit "F" (Cont.)

House District	Description	Total Pop.	Black Pop.	% Black	% Black VAP	Deviation
106	Forrest County: Beat 1, Pcts; Dixie Beat 4, Pcts; Forrest County A.H.S. Beat 5, Pcts; Brooklyn Carnes Maxie Thames Pearl River County: Precincts of Popularville East " West Byrd Line Hickory Grove Gum Pond Wolf River Oak Hill Hillsdale Fords Creek Buck Branch White Sand Mill Creek Derby Progress Silver Run Steep Hollow Savannah McNeill Caesar Stone County: Beat 2	19,287				+6.14

[CERTIFICATE OF SERVICE OMITTED]

219

IN THE
UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

Civil Action No. 3830(A)

[Filed Nov. 12, 1976]

PEGGY H. CONNOR, ET AL., PLAINTIFFS

v.

CLIFF FINCH, ET AL., DEFENDANTS

AND

UNITED STATES OF AMERICA, PLAINTIFF-INTERVENOR

Before COLEMAN, Circuit Judge, RUSSELL and COX, District Judges.

PER CURIAM:

This is the third, and the last, of a series of decrees reapportioning the Mississippi Legislature.[1]

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[1] We have heretofore described the difficulties involved in the transportation of Mississippi's system of multiple member districts into a statewide single-member system for the election of legislators. The acute difficulty arises from the absence of precinct population figures and because most of the county beats have been reapportioned since 1970. No census has been taken within the new beat boundaries. We have used estimates as nearly accurate as obtainable, compiled from known factors. The private plaintiffs and the Justice Department disagree with many of these estimates, but their disagreements are *also based on estimates*. It comes down to whether single member reapportionment shall be allowed to founder on these population disagreements. We decline to embrace that result.

The Department of Justice argues that the use of beat lines results in dilution of black voting strength. There is no credible evidence in this record to support that theory.

The first decree reapportioned the State Senate from multiple member to single member districts, August 24, 1976, —— F. Supp. —— (S.D. Miss., 1976).

The second decree reapportioned the House of Representatives from multiple member to single member districts, September 8, 1976, —— F. Supp. —— (S.D. Miss., 1976).

The private plaintiffs and the Department of Justice have filed objections. To improve upon discrepancies involving contiguity and population, the reapportionment of the House of Representatives is hereby amended in the following respects, and to that extent only:

District	Geographical Description	Population	Variance
8	Coahoma County: The Precincts of Coahoma, Lula, Lyon, and Jonestown; Tunica County: Beats 1, 2, 3 and 4; also Armory Precinct	16,813	—7.5
15	Coahoma County: Beat 2 and all Clarksdale Precincts in Beats 1 and 3	16,677	—8.2
16	Coahoma County: Beat 4, and 5, and Mattson Precinct	17,465	—3.9
53	Warren County: The Precincts of Yokena, Redbone, Goodrow, Tingle, Beechwood, Culkin, Kings, St. Aloyisuis, and American Legion (Blackburn)	16,928	—6.8

District	Geographical Description	Population	Variance
54	Warren County: The Precincts of Jett, Fire Station #7, and Jonestown	16,492	—9.2

(The reapportionment of Warren County by Beats is on appeal to the Supreme Court. Precinct structure must conform to Beat structure.)

55	Warren County: The Precincts of Bovina, Oak Ridge, Redwood, Walters, Brunswick, Cedar Grove, Auditorium and Central Fire Station; Yazoo County: The Precincts of Dover, East Bentonia, West Bentonia, Phoenix, Mechanicsburg, Satartia, Fugate, Deasonville, and Valley	17,082	—6.0
60	Kemper County; Lauderdale County: All Precincts in Beats 1 and 2 outside the City of Meridian; the Precincts of Obadiah and Shucktown in Beat 3	18,932	+4.2
78	Lauderdale County: Meridian City Precincts 1, 2, 3, 7 and 8, and the County Precincts of School Gap and Nellieburg in Beat 3	19,751	+8.7

80	Lauderdale County: All Precincts in Beat 3 outside the City of Meridian except Obadiah, Shucktown, School Gap and Nellieburg; All Precincts in Beat 4 except Meridian Precinct No. 13; All Precincts in Beat 5 outside the City of Meridian except East Bonita	19,371	+6.6
98	Amite County: Beats 4 and 5		
	Pike County: Beats 4 and 5	17,995	—1.0
99	Pike County: Beats 1, 2 and 3	19,243	+6.0[2]

SPECIAL ELECTIONS

The one remaining substantial issue in this case is whether we should require special elections in any of the newly created legislative districts. The 1975 elections were held pursuant to a temporary plan devised by this Court, from which no party appealed or sought a stay.

On the entire record we have already held that an attempted reapportionment enacted by the Mississippi Legislature in 1975 was not unconstitutional, Conner v. Waller, 396 U.S. F. Supp. 1308, reversed on other grounds, 421 U.S. 656 (1975). The exhaustive analysis of the 1975 legislative act reported at 396 F. Supp. 1308-1341, is made a part of this opinion by reference. Suffice it to say that our 1975 court plan proceeded to tighten the legislatively enacted reapportionment. We remain of the view, then expressed, that the temporary plan comported with all pertinent Constitutional standards.

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[2] The final judgment in this case, to be set forth on a separate document, Rule 58, Federal Rules of Civil Procedure, will reflect the changes hereinabove set forth.

Consequently, we conclude that the only available thesis for ordering special elections in any of the newly formulated legislative districts would be where required to remedy any impermissible dilution of black voting strength in the temporary plan when compared with the permanent plan established for the 1979 elections.

The subject has its difficulties. See "Minority Challenges to At-Large Elections: The Dilution Problem", 10 Georgia Law Review 353 (1976).

The Fifth Circuit has written copiously in this field, two of its more recent decisions being McGill v. Gadsden County Commission, 5 Cir. 1976, 535 F.2d 277, and Paige v. Gray, 5 Cir. 1976, 538 F.2d 1108. These cases reviewed the jurisprudence, including such cases as East Carroll Parish School Board v. Marshall, —— U.S. ——, 96 S.Ct. 1083, 47 L.Ed.2d 296 (1976).

From these cases it seems clear that (1) those who assert dilution of black voting strength have the burden of proving it; and (2) the significance of past discrimination in dilution cases lies in how it bears on political participation today.

In any event, the standards established in the Fifth Circuit *Zimmer* decision, reaffirmed in *Paige*, 538 F.2d at 1111, are:

> Where a minority can demonstrate lack of access to the process of slating candidates, the unresponsiveness of legislators to their particularized interests, a tenuous state policy underlying the preference for multi-member or at-large districting, or that the existence of past discrimination in general precludes the effective participation in the election system, a strong case is made. Such proof is enhanced by a showing of the existence of large districts, majority vote requirements, anti-single shot voting provisions and the lack of provision for at-large candidates running from particular geographical subdistricts. The fact of dilution is established upon proof of the existence of an aggregate of these factors. The Supreme Court's recent pronouncement in *White* v. *Regester*, *supra*, demonstrates, however, that all these factors need not be proved in order to obtain relief.
>
> 485 F.2d at 1305.

We think the Eighth Circuit correctly defined the principle when it said,

> The constitutional touchstone is whether the system is open to full minority participation, not whether proportional representation is in fact achieved.

Dove v. Moore, 8 Cir. 1976, 539 F.2d 1152, 1155.

The electoral process in Mississippi has never known the practice generally described as "slating candidates".

The failure of the plaintiffs to demonstrate any present impact from past discrimination is described at 396 F. Supp. 1325.

Our prior opinion, 396 F. Supp. 1308, 1325, demonstrated the failure of the plaintiffs to show legislative unresponsiveness to the needs of black citizens.

The long established state policy of multi-member districts was thoroughly discussed at 396 F. Supp. 1323.

The Attorney General of the United States dispatched numerous federal observers to witness the 1975 elections in Mississippi—first primary, second primary, and general election. At these elections state and local officials are nominated and elected, *from constable to governor.* We requested a detailed report from the Attorney General as to any observed interference with the right of black citizens to participate in the 1975 elections. Nothing was reported beyond some disputes as to whether an individual was registered to vote in the precinct where he was offering to vote, whether he was registered at all, and such like. We observe that the Department of Justice has initiated no prosecutions for alleged violations of federally guaranteed voting rights in 1975.

Observers were dispatched to Mississippi to observe the 1976 Presidential and Congressional elections. The Attorney General has notified this Court of no interference with the right to vote in 1976. On the other hand, the press has uniformly reported that an unusually heavy turn-out of black voters produced the Presidential victory in Mississippi.

We have no difficulty in holding that at the present day interference with the right of black citizens to cast

their ballots is a myth. We reaffirm our prior holding, 396 F. Supp. 1326, "that the Voting Rights Act of 1965 has effectively reduced all such racially discriminatory factors to what honestly may be termed an irreducible minimum".

The Senate

There is no justification for ordering special elections in any newly created senatorial district. Every such district with a black population majority was part of a black majority district in 1975. The only difference is that there no longer will be any multiple member districts.

The House of Representatives

Under our 1975 temporary plan there were 49 single member House districts and 7 single member flotorial [sic] districts. Twenty multiple member districts elected two representatives each, three elected three members each, and three elected four members each. Our 1979 plan has no multiple member districts.

We now discuss the newly created black majority districts, brought into existence where no black majority district previously existed.

New District 52. Noxubee County and the Precincts of Crawford and Artesia in Lowndes County.

From 1890 until 1962, under the inelastic provisions of the Constitution of 1890, Noxubee County had three Representatives in the Legislature. It now has 14,288 people, less than enough for one Representative. The black population is 9,397. The white population is 4,844. Under the temporary 1975 plan Noxubee County was combined with Oktibbeha County in District 23A for the election of two Representatives. It was also included in District 23B for the election of a flotorial [sic] Representative. The white population of District 23A is 23,413; the black population is 19,401. The 9,397 black citizens of Noxubee County, in a county with not enough population of its own to elect one Representative, took part in the election of three Representatives, two of them coming from a district which was 55% white and 45% black.

A special election in new District 52 would necessitate special elections in new Districts 43, 44, 45, and 46, of which Noxubee County is not a part.

For all these reasons, no special election will be ordered for new District 52.

New District 79. Lauderdale County: Meridian City Precincts 5, 6, 9, 13, 14, 15, 16, 17, and 18, and the Precinct of East Bonita.

The newly formed district was in 1975 District No. 79, which had a white population of 65.5%. The black population of the new district is 56.1%.

A special election in this District will be ordered.

New District 81. The Counties of Claiborne and Jefferson.

Claiborne County has 10,086 people, of whom 7,522 are black, 2,536 are white.

Jefferson County has 9,225 people, of whom 6,996 are black and 2,296 are white.

It will be observed that neither county has enough people to elect a Representative.

Under the 1975 plan, Jefferson County was included in District 32 with Copiah County, a black majority county.

Claiborne County was included with Warren County in District 30 for the election of three Representatives. Warren County has 18,355 black population and 26,474 white. The totals for District 30 (Claiborne and Warren) were 29,410 white and 25,877 black (53% white, 47% black).

An added problem is that a special election in new District 81 would necessitate special elections in new Districts 53, 54, and 55 (Warren County). The redistricting of beats in Warren County (which necessarily entails the reconstitution of voting precincts) is now on appeal to the Supreme Court. Until the Supreme Court shall have decided that matter, we do not consider that equity requires that we should risk illegal elections in the three Warren County districts.

For all of these reasons, no special election will be ordered in new District 81.

New District 3. Beats 1, 2, 3, and 4 of Marshall County.

In 1975 this area was in District 3A for the election of Representatives. That district included all five beats in Marshall County, instead of four beats as now reconstituted. Marshall County also participated in the election of a floater representative, District 3B. Marshall County has a population of 14,891 black people and 9,101 whites. At the general election of November 4, 1975, a white candidate for representative in District 3A received 5,573 votes. His black opponent received 3,317, carrying ten of the fifty precincts. It would appear that the black people of Marshall County have spoken and we know of no constitutional or equitable principle which would require us to undo the action they have taken.

New District 97. Wilkinson County: Amite County: Beats 1, 2 and 3.

Wilkinson County has a population of 11,099, approximately 61% of the amount required for a representative. It has 7,499 blacks and 3,588 whites. Under the 1975 plan it was in District 34, which had a 54.2% white majority. New District 97, in which Wilkinson is now included, has a total black population of 60.6%.

A special election will be ordered in this District.

Other Districts

The remaining new districts with black population majorities participated in the 1975 elections in districts which had black population majorities at that time. Therefore, special elections will not be ordered in those areas.

Plaintiffs have argued that we should order special elections in all new districts in which two presently sitting Representatives have been thrown together, as well as in the areas which they say are now "left without representation". This argument overlooks the fact

that what we have done is to devise a permanent plan for the election of legislators in 1979, not a plan for the wholesale reconstitution of the Legislature in mid-term. The legislators in these areas were elected to represent them for a full four years unless special elections were necessary. There is nothing of record to indicate that such legislators will now neglect the areas from which they were duly chosen.

Except as hereinabove set forth, all objections and motions for special elections filed by the private plaintiffs and the Department of Justice are found to be without merit and are denied.

The Timing of Special Elections

In fixing a time for special elections, the Court is faced with a dilemna. On October 8, 1976 the Court held an afternoon's conference with the parties to determine if an agreed decree might be entered as to the identity of the districts in which special elections were to be held. The purpose was to avoid the possibility of sending persons to the Legislature in an election which the Supreme Court might later render illegal by disapproving our plan of reapportionment, also possibly unseating legislators lawfully elected in 1975. The effort was nonproductive.

It was suggested that a few new districts might be allowed to elect added members of the House of Representatives, to serve only until the 1979 elections. This would mean that if the plan should fail to pass the scrutiny of the Supreme Court then only those seats would be vacated and the legislative process would not be unduly disrupted. This was suggested particularly with reference to the districts hereinabove discussed in detail. The Supreme Court has held that it would not disapprove minor variations from a state's prescribed legislative numbers when such a change is shown to be necessary to meet constitutional requirements, Minnesota State Senate v. Beens, 406 U.S. 187, 199 (1972). The private plaintiffs objected on the ground that this would dilute the legislative voting strength of the pres-

ently sitting four black members of the House of Representatives. Consequently, we abandoned that approach.

We have concluded that the equitable and least disruptive course would be for the Court to refrain from setting dates for special legislative elections until time for an appeal has expired or until the Supreme Court shall have decided an appeal on the merits. We expressly retain jurisdiction of the case for the purpose of setting dates for special elections as soon as one of the above alternatives shall have occurred.

Court Costs, Special Masters' Fees, and Attorneys' Fees

All appropriate and legal costs of court are adjudged against the defendants, for which judgment, when the amount is computed, will be entered against the State of Mississippi, Fitzpatrick v. Bitzer, —— U.S. ——, 96 S.Ct. 2666, —— L.Ed.2d —— (1976).

The Court has heretofore found that the Mississippi Legislature made a good faith effort to reapportion itself in 1973 and 1975. The 1975 effort was upheld by this Court but failed on account of the disapproval of the Attorney General of the United States. We are thus of the opinion that no attorneys' fees are allowable in this case.

The amount of the fees to be allowed the special masters for their services, for which judgment will be awarded against the State, will be determined after an evidentiary hearing on the reasonableness of such fees, for which jurisdiction is also retained.

The private plaintiffs and the Department of Justice will prepare and submit a proposed judgment, written on a separate document, in accordance with the Rules, embodying each and every appropriate part of the decrees rendered on August 24, 1976, September 8, 1976, and on this date. When such judgment shall have been duly approved and entered the same will be a final judgment on the reapportionment of the Mississippi Legislature.

SO ORDERED, ADJUDGED, and DECREED, this the — day of November, 1976.

/s/ Jas. P. Coleman
United States Circuit Judge

Chief U.S. District Judge

U.S. District Judge

IN THE
UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

Civil Action No. 3830(A)

[Filed Nov. 18, 1976]

PEGGY J. CONNOR, ET AL., PLAINTIFFS

v.

CLIFF FINCH, ET AL., DEFENDANTS

AND

UNITED STATES OF AMERICA, PLAINTIFF-INTERVENOR

FINAL JUDGMENT

In accordance with the opinions of the Court entered on August 24, 1976, September 8, 1976, and November 12, 1976, it is ORDERED, ADJUDGED, AND DECREED, the defendants, Cliff Finch, Governor of Mississippi, A. F. Summer, Attorney General of Mississippi, Heber Ladner, Secretary of State of Mississippi, Evelyn Gandy, Lieutenant Governor of Mississippi and Presiding Officer of the Mississippi Senate, William B. Alexander, President Pro Tempore of the Mississippi Senate, and C. B. "Buddie" Newman, Speaker of the Mississippi House of Representatives, their officers, agents, servants, employees, attorneys, successors in office, and all persons in active concert or participation with them, are permanently restrained and enjoined as follows:

1. The following permanent legislative reapportionment plans are hereby ordered into full force and effect for the regular quadrennial elections of 1979 and thereafter until altered according to law.

2. Except in those instances in which a special election is ordered, these plans shall not affect the terms of office of legislators elected in 1975.

3. In the event of the death, resignation or removal from office of a legislator presently in office, the vacancy so created shall be filled by a special election in that district promulgated for 1979 in which the legislator shall have resided at the time of such death, resignation or removal from office.

4. The removal by a legislator of his residence from one place to another within the district for which he was elected in 1975 shall not affect the term of office for which he was elected.

5. The 52 members of the Mississippi State Senate to be chosen in the quadrennial election year of 1979 shall be elected from districts consisting of the specified counties, beats, and precincts as follows:

SENATE DISTRICTS

District Number	Description
1	DeSoto County; Marshall County: Beat 3
2	Lafayette County; Marshall County: Beats 1, 2, 4, and 5
3	The Counties of Benton, Pontotoc, and Union
4	The Counties of Alcorn and Tippah
5	The Counties of Prentiss and Tishomingo Itawamba County: Beats 1 and 2
6	Lee County
7	Monroe County; Itawamba County: Beats 3, 4, and 5
8	Lowndes County: less Air Base Precinct
9	The Counties of Chickasaw and Clay Lowndes County: Air Base Precinct

District Number	Description
10	The Counties of Choctaw, Montgomery, and Webster; Calhoun County: Beats 1, 2, 4, and 5
11	The Counties of Panola and Yalobusha; Calhoun County: Beat 3
12	The Counties of Tate and Tunica; Quitman County: Beats 1, 2, 3, and 5
13	Coahoma County; Quitman County: Beat 4
14	Bolivar County: except the Precincts of Shelby and Duncan-Alligator
15	Sunflower County; Bolivar County: the Precincts of Shelby and Duncan-Alligator
16	Washington County: Beats 1, 3, and 4
17	Humphreys County; Washington County: Beats 2 and 5
18	Leflore County
19	The Counties of Grenada and Tallahatchie
20	The Counties of Carroll and Leake; Attala County: Beats 1, 2, 3, and 4
21	The Counties of Neshoba and Winston; Attala County: Beat 5
22	The Counties of Noxubee and Oktibbeha
23	Kemper County; Lauderdale County: Beats 1 and 3
24	Clarke County: Beat 4 Lauderdale County: Beats 2, 4, and 5

District Number	Description
25	The Counties of Jasper and Smith;
	Clarke County: Beats 1, 2, 3, and 5
26	The Counties of Newton and Scott
27	Rankin County
28	Madison County;
	Holmes County: Beats 2 and 3
	Yazoo County: Beats 2 and 4
29	The Counties of Issaquena and Sharkey;
	Holmes County: Beats 1, 4, and 5
	Yazoo County: Beats 1, 3, and 5
30	Warren County
31	Hinds County: Beat 1
32	Hinds County: Beat 2
33	Hinds County: Beat 3
34	Hinds County: Beat 4
35	Hinds County: Beat 5
36	Simpson County;
	Copiah County: Beats 1, 2, 4, and 5
37	The Counties of Claiborne and Lincoln;
	Copiah County: Beat 3
38	Jefferson County;
	Adams County: Beats 1, 2, 4, and 5
39	The Counties of Amite, Franklin and Wilkinson;
	Adams County: Beat 3
40	Pike County;
	Walthall County: Beats 1, 2, and 3
41	The Counties of Lawrence and Marion;
	Jefferson Davis County: Beat 2
	Walthall County: Beats 4 and 5

District Number	Description
42	Covington County;
	Jefferson Davis County: Beats 1, 3, 4, and 5
	Jones County: Beat 5, and the Precincts of County Barn and Ellisville Courthouse
43	Jones County: Beats 1, 2, 3, and 4, less the Precincts of County Barn and Ellisville Courthouse
44	Forrest County: Beats 1, 2, and 3; the Precincts of Camp School, Dixie Pine, Hawkins Junior High, Rowan High, William Carey, and McCallum
45	The Counties of Lamar and Perry;
	Forrest County: Beat 5 and the Precincts of County A.H.S. and McLaurin
	Stone County: Beats 1 and 2
46	The Counties of George, Greene, and Wayne;
	Stone County: Beats 3, 4, and 5
47	The Counties of Hancock and Pearl River
48	Harrison County: the City of Gulfport and Precinct 11 in the City of Biloxi
49	Harrison County: all of the City of Biloxi except Precinct 11
50	Harrison County: all that part outside the Cities of Biloxi and Gulfport
51	Jackson County: all that part outside the Cities of Moss Point and Pascagoula plus the Precinct of Bayou Casotte No. 4
52	Jackson County : the City of Moss Point; all of the City of Pascagoula except the Precinct of Bayou Casotte No. 4

6. For the regular quadrennial election of 1979, and thereafter until changed according to law, the 122 members of the Mississippi House of Representatives shall be elected from 122 districts as follows:

HOUSE DISTRICTS

District Number	Description
1	DeSoto County: Beat 3, Beat 4, and the Precinct of Hernando East
2	DeSoto County: Beat 1, Beat 2, and the Precincts of Alphaba, Lewisburg West, Love, Nesbit East, and Pleasant Hill
3	Marshall County: Beats 1, 2, 3, and 4
4	Benton County; Marshall County: Beat 5; Lafayette County: Beats 2 and 3
5	Tippah County; Prentiss County: Beat 2
6	Alcorn County: Beat 1, Beat 4, Beat 5, and the Precincts of Biggersville and Rienzi
7	Tishomongo County: Beats 1, 2, 3, and 4 Alcorn County: Beat 2, and the Precinct of South Corinth
8	Coahoma County: The Precincts of Coahoma, Lula, Lyon, and Jonestown; Tunica County: Beats 1, 2, 3, and 4; also Armory Precinct
9	Tate County;
10	Panola County: Beats 1, 2, and 5
11	Panola County: Beats 3 and 4; Yalobusha County: Beats 1, 2, 3, and 4
12	Lafayette County: Beats 1, 4, and 5

District Number	Description
13	Union County;
14	Prentiss County: Beats 1, 3, 4, and 5; Tishomingo County: Beat 5
15	Coahoma County: Beat 2 and all Clarksdale Precincts in Beats 1 and 3
16	Coahoma County: Beat 4, Beat 5, and Mattson Precinct
17	Quitman County Tunica County: The Precinct of Two Mile Lake
18	Pontotoc County;
19	Lee County: Beat 1, Beat 2, and Belden Precinct
20	Lee County: The Precincts of Auburn, Bissell, East Heights North, East Heights South, Eggville, Gilvo, Mooreville, Old Union, Palmetto, Tupelo III, Tupelo IV, Tupelo V, and Verona
21	Itawamba County; Lee County: The Precincts of Petersburg, Plantersville, and Richmond
22	Bolivar County: Beat 1, and the Precincts of Pace, Longshot, Shaw, Skene, and Stringtown; Sunflower County: The Precinct of Boyer-Linn
23	Bolivar County: The Precincts of Central Cleveland, East Central Cleveland, East Cleveland, West Cleveland, and Boyle
24	Bolivar County: Beat 3, and the Precincts of North Cleveland and Merigold

District Number	Description
25	Sunflower County: Beat 1, Beat 3, and the Precinct of Moorehead
26	Sunflower County: Beat 5; Sunflower and Indianola Precincts in Beat 2; Dockery, Doddsville, and Ruleville Precincts in Beat 4
27	Tallahachie County: Beats 1, 2, 4, and 5, and the Precinct of Paynes
28	Calhoun County; Yalobusha County: Beat 5
29	Chickasaw County; Lee County: The Precincts of Pleasant Grove and Shannon
30	Monroe County: Beat 4, and the Precincts of Aberdeen III, Lackey, Central Grove, Boyd's (Pine Grove), Nettleton, Willis, and Wren Lee County: The Precincts of Brewer, Kedron, and Nettleton
31	Monroe County: Beat 1, Beat 2, and the Precincts of Amory V, Bartahatchie, Bigbee, Gattman, Grubb Springs, and Hamilton
32	Issaquena County; Washington County: Beat 1, and the Precinct of Avon
33	Washington County: The Precincts of Ward Center, Community Center, Arcola, and Hollandale
34	Washington County: Beat 8, and the Precinct of New County Garage
35	Washington County: The Precincts of Darlove, Bourbon, County Recreation Center, Industrial College, Leland Health Clinic, and Leland Light Plant
36	Leflore County: Beat 1, Beat 3, and the Precinct of Money

District Number	Description
37	Leflore County: Beats 4 and 5
38	Carroll County; Leflore County: The Precincts of Northeast Greenwood and East Greenwood Attala County: Beat 3, less Possumneck Precinct
39	Grenada County: Beats 1, 3, 4, and 5; Tallahatchie County: Beat 3, less Paynes Precinct
40	Montgomery County; Grenada County: Beat 2
41	The Counties of Choctaw and Webster;
42	Clay County;
43	Oktibbeha County: Beats 1, 3, 4, and the Precinct of Hickory Grove
44	Oktibbeha County: Beat 5, and the Precincts of Northeast Starkville, and Osborn; Lowndes County: The Precincts of Mayhew, West Lowndes, Barrow, and University
45	Lowndes County: The Precincts of Air Base, Caledonia, Rural Hill, New Hope, Fairview, and Coleman
46	Lowndes County: The Precincts of Brandon, Lee High, Stokes-Beard, Sale, Franklin, Caldwell, and Hunt
47	Sharkey County; Humphreys County: Beat 5; Yazoo County: The Precincts of Carter, Lake City, Zion, Eden, Free Run, East Midway, West Midway, Harttown, Enola, Fairview, and Holly Bluff

District Number	Description
48	Humphreys County: Beats 1, 2, 3, and 4;
	Holmes County: The Precincts of Coxburg, Tchula, and Thornton
49	Holmes County: Entire County, less the Precincts of Coxburg, Tchula, and Thornton
50	Attala County: Beats 1, 2, 4, 5, and the Precinct of Possumneck
51	Winston County;
52	Noxubee County;
	Lowndes County: The Precincts of Crawford and Artesia
53	Warren County: The Precincts of Yokena, Redbone, Goodrow, Tingle, Beechwood, Culkin, Kings, St. Aloysius, and American Legion (Blackburn)
54	Warren County: The Precincts of Jett, Fire Station #7, and Jonestown
55	Warren County: The Precincts of Bovina, Oak Ridge, Redwood, Walters, Brunswick, Cedar Grove, Auditorium and Central Fire Station
	Yazoo County: The Precincts of Dover, East Bentonia, West Bentonia, Phoenix, Mechanicsburg, Satartia, Fugate, Deasonville, and Valley
56	Yazoo County: The Precincts of Benton, Center Ridge, Robinette, East Courthouse, West Courthouse, South City Hall, North City Hall, West Lintonia, and East Lintonia
57	Madison County: Beats 1, 4, and 5
58	Leake County;
	Neshoba County: The Precincts of Hays, Turner, Dixon, and Groves

District Number	Description
59	Neshoba County: The entire county, less the Precincts of Hays, Turner, Dixon and Groves
60	Kemper County
	Lauderdale County: All Precincts in Beats 1 and 2 outside the City of Meridian; the Precincts of Obadiah and Shucktown in Beat 3
61	Hinds County: Precincts 17, 35-38, 42-45, Twin Pines
62	Hinds County: Precincts 27, 29, 39-41, 79-83, Liberty Grove
63	Hinds County: Precincts 1, 5, 6, 8, 9, 14-16, 32-34
64	Hinds County: Precincts 12, 13, 21-23, 28, 30
65	Hinds County: Precincts 2, 4, 10, 11, 18, 19, 50
66	Hinds County: Precincts 20, 31, 52, 55-57, 61
67	Hinds County: Precincts 47, 51, 53, 58, 63, 64, 66
68	Hinds County: Precincts 24-26, 54, 59, 60, 62, 67-69
69	Hinds County: Precincts 49, 70-77
70	Hinds County: Precincts of Bolton, Brownsville, Clinton 1, Clinton 2, Clinton 3, Clinton 4, Cynthia, Flag Chapel, North Clinton, Pocahontas, Presidential Hills, Tinnin
71	Hinds County: Precincts of Cayuga, Edwards, Fairfax, Hickory, Learned, Midway, Raymond 1, Raymond 2, Van Winkle 1, Van Winkle 2

District Number	Description
72	Hinds County: Precincts of Briarcliff, Byram, Chapel Hill, Dry Grove, Forest Hill, Old Byram, Red Hill, Terry, Utica 1, Utica 2, Woodville Heights
73	Rankin County: Beat 2; Madison County: Beats 2 and 3
74	Rankin County: Beats 4 and 5
75	Rankin County: Beats 1 and 3
76	Scott County: Beats 1, 2, 4, and 5
77	Newton County;
78	Lauderdale County: Meridian City Precincts 1, 2, 3, 7 and 8, and the County Precincts of School Gap and Nellieburg in Beat 3
79	Lauderdale County: Meridian City Precincts 5, 6, 9, 13, 14, 15, 16, 17, and 18, and the Precinct of East Bonita
80	Lauderdale County: All Precincts in Beat 3 outside the City of Meridian except Obadiah, Shucktown, School Gap and Nellieburg; All Precincts in Beat 4 except Meridian Precinct No. 13; All Precincts in Beat 5 outside the City of Meridian except East Bonita
81	The Counties of Claiborne and Jefferson;
82	Copiah County: Beat 1, Beat 4, Beat 5 and the Precincts of East Hazlehurst, West Hazlehurst, Barlow, Glancy, and Allen
83	Lawrence County; Copiah County: Beat 2 and the Precincts of Ainsworth and Martinsville West; Simpson County: The Precincts of Bridgeport, Pinola, and Shivers

District Number	Description
84	Simpson County: Beat 1, Beat 2, Beat 3, Beat 5; the Precincts of Magee North and Magee South
85	Smith County; Scott County: Beat 2
86	Jasper County: Beats 1, 3, 4, and 5; Jones County: The Precincts of Gitano, Matthews, and Shady Grove
87	Clarke County; Jasper County: Beat 2
88	Adams County: Beats 1 and 2, and the Precincts of Liberty Park, Concord, and Palestine
89	Adams County: Beats 4 and 5, and the Precinct of Somerset
90	Franklin County; Lincoln County: Beat 4, and the Precincts of Caseyville, Loyd Star, Old Red Star, Vaughn, and Zetus
91	Lincoln County: Beat 1, Beat 2, Beat 3, and the Precinct of Northwest Brookhaven
92	Jefferson Davis County: Beats 1, 3, 4, and 5; Covington County: Beat 3, Beat 4, Beat 5, and the Precincts of South Collins and Eminence
93	Jones County: Beat 2, and the Precincts of West Jones, Mason School, 26th Street Fire Station, and Lamar School
94	Jones County: Beat 3, and the Precincts of Sharon, Sandersville, City Barn, Maddox School, Stone Deavours School

District Number	Description
95	Jones County: Beat 4, and the Precincts of Moselle, Pendorf, Pine Grove, Rainey, South Jones, and Shelton
96	Wayne County;
97	Wilkinson County; Amite County: Beats 1, 2, and 3
98	Amite County: Beats 4 and 5 Pike County: Beats 4 and 5
99	Pike County: Beats 1, 2 and 3
100	Walthall County; Jefferson Davis County: Beat 2; Marion County: The Precincts of Goss, Morgantown, White Bluff, Stovall, and Kokomo
101	Marion County: Entire County except the Precincts of Goss, Morgantown, White Bluff, Stovall, and Kokomo
102	Lamar County; Covington County: Beat 1, and the Precincts of Richmond and Sanford
103	Forrest County: The Precincts of Lillie Burney, Woodley School, Jones School, Petal High, East Bowie, Petal-Harvey, Camp School, and Hawkins Junior High
104	Forrest County: The Precincts of Blair High, Eatonville, Glendale, Petal-Leeville, Rawls Springs, Macedonia, Davis School, Grace Christian, and Pinecrest
105	Forrest County: The Precincts of Central School, Dixie School, Westside, Eaton School, Sunrise, Walthall, Dixie Pine, Rowan High, William Carey, and Thames

District Number	Description
106	Forrest County: The Precincts of Forrest County A.H.S., McCallum, McLaurin, Brooklyn, Carnes, and Maxie; Pearl River County: The Precincts of Poplarville East, Poplarville West, Byrd Line, Hickory Grove, Gum Pond, Wolf River, Oak Hill, Hillsdale, Fords Creek, Buck Branch, White Sand, Mill Creek, Derby, Progress, Silver Run, Steep Hollow, Savannah, McNeill, and Caesar; Stone County: Beat 2
107	The Counties of Greene and Perry
108	Pearl River County: Beat 4, and the Precincts of Picayune I, II, III, and V; the Precincts of Ozone, Carriere, and Salem
109	George County; Stone County: Beats 1, 3, 4, and 5
110	Hancock County;
111	Harrison County: The Precincts of Biloxi Nos. 1-4, D'Iberville, North Bay, and White Plains
112	Harrison County: The Precincts of Biloxi Nos. 5-7, 7A-8, Holly Hills, and Howard Creek
113	Harrison County: The Precincts of Stonewall, West Handsboro, Biloxi Nos. 9-11, and East Handsboro
114	Harrison County: The Precincts of Gulfport Nos. 7 and 12, New Hope, E & W Saucier, Gulfport No. 11, Advance, East Lyman, East Orange Grove, Peace, and Poplar Head

District Number	Description
115	Harrison County: The Precincts of Gulfport Nos. 4, 5, 6, 8, and 9, East and West Mississippi City, and East and West North Gulfport
116	Harrison County: The Precincts of Gulfport Nos. 13 and 14, Gulfport Nos. 2, 3, and 10, Outside Long Beach, West Orange Grove, West Lyman, and Lizana
117	Harrison County: The Precincts of Gulfport No. 1, East Pass Christian, West Pass Christian, East Long Beach, West Long Beach, Pineville, Delisle, Ladner, Vidalia, and Riceville
118	Jackson County: Beat 1
119	Jackson County: Beat 2
120	Jackson County: Beat 3
121	Jackson County: Beat 4
122	Jackson County: Beat 5

7. Defendants shall order and direct special elections in House Districts 79 and 97 on a date to be specified by the Court. The Court shall refrain from setting dates for special legislative elections until time for an appeal has expired or until the Supreme Court shall have decided an appeal on the merits. The Court retains jurisdiction of the case for the purpose of setting dates for special elections as soon as one of the above alterations shall have occurred.

8. Except as hereinabove set forth, all objections and motions for special elections filed by the private plaintiffs and the Department of Justice are denied.

9. All appropriate and legal costs of court are adjudged against defendants, for which judgment, when the amount is computed, will be entered against the State of Mississippi.

10. Plaintiffs' request for an award of attorney's fees is denied.

11. Fees to be allowed the special masters shall be taxed against the State of Mississippi, and the amount of such fees shall be determined after an evidentiary hearing on the reasonableness of such fees, for which jurisdiction is retained.

12. Except for the injunctive relief herein granted, and subject to the Court's retention of jurisdiction stated above, the complaint and amended complaints filed herein are dismissed.

ORDERED, ADJUDGED, AND DECREED on this the 17 day of November, 1976.

/s/ Jas. P. Coleman
United States Circuit Judge
For the Court, Composed of

/s/ Dan M. Russell, Jr. and
United States District Judge

/s/ Harold Cox
United States District Judge
(3 Judge District Court)

Approved as to form:

For the Private Plaintiffs:

/s/ Frank R. Parker
Attorney for Private Plaintiffs

For the United States, as
Plaintiff-Intervenor:

/s/ Joseph E. Brown, Jr.
Attorney for Plaintiff-Intervenor

For the Defendants:

/s/ H. F. Summer
Attorney for Defendants

IN THE
UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

Civil Action No. 3830(A)

[Filed Nov. 18, 1976]

[Caption Omitted]

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that plaintiffs Peggy J. Connor, et al., hereby appeal to the United States Supreme Court from paragraphs 7 and 8 of the Final Judgment entered in this action on November 18, 1976.

Dated: November 18, 1976.

/s/ Frank R. Parker
FRANK R. PARKER
Lawyers' Committee for
Civil Rights Under Law
233 North Farish Street
Jackson, Mississippi 39201

Attorney for Plaintiffs

[Certificate of Service Omitted]

IN THE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
FOR THE
JACKSON DIVISION

Civil Action No. 3830(A)

[Filed Nov. 29, 1976]

[Caption Omitted]

MOTION TO ALTER OR AMEND JUDGMENT

Plaintiffs, by their attorneys, move the Court pursuant to Rule 59 to :

1. Grant plaintiffs a hearing on their objections to the court-ordered Senate and House plans; and

2. Alter and amend its final judgment of November 18, 1976, to substitute for the Court's Senate plan plaintiffs' proposed Modified Henderson Senate County Boundary Plan, attached as Exhibit A to Plaintiffs' Supplement to Motion to Alter and Amend Judgment filed October 8, 1976, and substitute for the House districts to which plaintiffs' have objected the alternative proposals attached as Exhibit B to Plaintiffs' Supplement to Motion to Alter and Amend Judgment filed October 8, 1976.

And as grounds for their motion, plaintiffs would show to the Court as follows:

1. The Senate plan ordered into effect by the District Court in its final judgment of November 18, 1976, is based not on 1970 Census data or any other form of population data, but in fact is based on the votes received by the Democratic candidates for Governor in the August 5, 1975 Democratic primary election, fails to provide substantial equality of population among the districts in violation of the Equal Protection Clause of the Fourteenth Amendment and the requirements of equity,

and unconstitutionally and inequitably cancels out, minimizes, disperses, and dilutes black voting strength.

2. Although the House plan likewise is based not on population statistics, but on voting results for the August 1975 Democratic primary, our analysis based on 1970 Census data shows that a substantial number of House districts meet constitutional and equitable requirements within the guidelines established by the Court, viz., basing the new House districts on beat and precinct lines. However, a substantial number of House districts in the Court's House plan continue unconstitutionally and inequitably to fail to provide substantial equality of population among the districts and to cancel out, minimize, disperse, and dilute black voting strength.

In support of their motions, plaintiffs submit herewith the attached affidavits and refer the Court as well to plaintiffs' Motions filed September 20 and October 8, 1976, and the exhibits attached to those motions, which are incorporated herein by reference.

Respectfully submitted,

/s/ Frank R. Parker
FRANK R. PARKER
Lawyers' Committee for
Civil Rights Under Law
233 North Farish Street
Jackson, Mississippi 39201

Attorney for Plaintiffs

APPENDIX A

IN THE
UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

Civil Action No. 3830(A)

[Caption Omitted]

AFFIDAVIT OF FRANK R. PARKER

STATE OF MISSISSIPPI)
) ss:
COUNTY OF HINDS)

FRANK R. PARKER, after first being duly sworn, deposes and says as follows:

1. I am lead counsel for the plaintiffs in the above-styled case.

2. Subsequent to the Court's opinion of September 8, 1976, I obtained from Mr. Hoyt T. Holland, Jr., special master for the Court, a copy of the current Holmes County redistricting plan showing the boundaries of the supervisors' districts for Holmes County. A copy of the map obtained showing the boundaries of the Holmes County supervisors' Districts was attached as Exhibit B to plaintiffs' motion to alter and amend judgment filed September 20, 1976. On that occasion Mr. Holland informed me that the population figures used by the Court and stated in its Senate and House plans are based on the votes received by the Democratic candidates for Governor in the August 1975 Democratic primary election.

3. Using current precinct maps and 1970 Census data, I and members of my staff working under my direct supervision and control, have calculated the population for the House districts for the Court's House plan in-

cluded in its final judgment of November 18, 1976. For all instances in which the current precinct (and beat) lines split 1970 Census enumeration districts, we estimated the portions of the precinct (and beat) population lying on each side of the precinct line within the Census enumeration district. These calculations indicate the following population and variance for the following House districts:

House District	Population (based on 1970 Census)	Variance
8	16,733	— 7.91%
15	14,471	—20.36%
16	19,438	+ 6.97%
22	20,067	+10.4%
23	16,209	—10.8%
24	15,381	—15.4%
25	16,594	— 8.7%
26	18,205	+ 0.2%
32	17,276	— 4.9%
33	16,860	— 7.2%
34	20,170	+11.0%
35	19,012	+ 4.6%
45	20,358	+12.0%
46	18,844	+ 3.7%
53	19,933	+ 9.70%
54	11,079	—39.03%
55	19,845	+ 9.21%

/s/ Frank R. Parker
FRANK R. PARKER

[Jurat Omitted]

APPENDIX B

IN THE
UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

Civil Action No. 3830(A)

[Caption Omitted]

AFFIDAVIT OF PROF. GORDON G. HENDERSON

STATE OF MISSISSIPPI)
) ss:
COUNTY OF HINDS)

GORDON G. HENDERSON, after first being duly sworn, deposes and says as follows:

1. I am Professor of Political Science and Director of the Computer Center at Tougaloo College, Tougaloo, Mississippi. I have a Ph.D. in political science from Columbia University (1962). I am familiar with the legal requirements of legislative redistricting. I have previously testified in this case. I am also familiar with the use of Census maps and Census statistics. I have testified in three county redistricting cases, including Hinds County and Smith County in Mississippi, and Rapides Parish in Louisiana.

2. I have analyzed the population distribution between Districts 28 and 29 in the District Court's permanent Senate plan contained in its final judgment of November 18, 1976. In this analysis I used 1970 Census statistics for Madison, Issaquena, and Sharkey Counties, and 1970 Census supervisors' district (beat) statistics for Yazoo County. Upon information and belief, the current supervisors' districts for Yazoo County are the same as those used for gathering 1970 Census data. For calculating the population of the Holmes County beats, I used the 1970 Census map for Holmes County showing

the location of the Census enumeration districts, the 1970 Census master tape printout for Holmes County showing the population for the Holmes County Census enumeration districts, and the map prepared by Comprehensive Planners, Inc., showing the boundaries of the five supervisors' districts for the current Holmes County redistricting plan.

3. My analysis from 1970 Census data and the current Holmes County redistricting plan shows an error in the population figures for Districts 28 and 29 in the Court's Senate plan. My analysis indicates that the Court erroneously included all of Census enumeration districts 7, 27, and 28 in Holmes County Beats 2 and 3 (District 28), when in fact substantial portions of those ED's are outside Beats 2 and 3 and lie within Beats 1 and 4 (District 29). Further, a small portion of ED 25 which is within Beat 3 was apparently not included in the Court's calculations for Beat 3. My analysis based on the above-stated data shows that the correct population for Senate District 28 in the Court's plan is 44,955, for a variance from the norm (42,633) of +5.45%, and that the correct population for Senate District 29 in the Court's plan is 46,880, for a variance from the norm of +9.96%. Accordingly, the maximum plus variance for the Court's Senate plan is +9.96% (Senate District 29), and the Court's own figures state the maximum minus variance as —8.33% (Senate District 38), for a total deviation in the Court's Senate plan of 18.29%.

/s/ Gordon G. Henderson
GORDON G. HENDERSON

[Jurat Omitted]

APPENDIX C

IN THE
UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

Civil Action No. 3830(A)

[Caption Omitted]

AFFIDAVIT OF JAMES W. LOEWEN

STATE OF MISSISSIPPI)
) ss:
COUNTY OF HINDS)

JAMES W. LOEWEN, after first being duly sworn, deposes and says as follows:

1. I am presently Associate Professor of Sociology at the University of Vermont, Burlington, Vermont. I received my Ph.D. in sociology from Harvard University in 1968. From 1968 to 1975 I taught sociology at Tougaloo College, Tougaloo, Mississippi. I am familiar with and have worked extensively with Bureau of the Census and other demographic studies of the population of Mississippi. Census and other demographic analysis were included in the two books I have written about Mississippi sociology and history, *The Mississippi Chinese: Between Black and White* (Harvard University Press, 1971), and *Mississippi: Conflict and Change* (Pantheon, 1974), and have been included in several articles I have written. I have previously testified in this case by deposition, and a copy of my qualifications and academic credentials were included in that deposition testimony.

2. I was asked by the attorney for the plaintiffs, Frank R. Parker, to calculate the total population, by race, for the voting precincts of Warren County. To perform these calculations I was provided with two maps

which are, upon information and belief, copies of the precinct maps for Warren County and Vicksburg as delineated in Exhibits D-10 and D-11 in *United States* v. *Board of Supervisors of Warren County*, Mississippi, Civil No. 73W-48(N), S.D. Miss., the precinct lines of which were drawn on Bureau of the Census census maps, and a copy of the computer printout from the Census master tape summary showing the population by race for each of the Census enumeration districts for Warren County, which is contained in Exhibit P-2 admitted in evidence at the February 7, 1975 hearing in this case. I also personally confirmed the location of the precinct boundaries with the Warren County Circuit Clerk's office.

3. Using these materials, and the Bureau of Census publication *General Population Characteristics: Mississippi*, No. PC(1)-B26 (1971), I estimated the population, by race, for each of the voting precincts of Warren County as follows:

Precinct	Total	White	Black
Cedar Grove	1,720	1,377	342
Kings	1,295	657	635
Walters	2,426	852	1,565
Oak Ridge	1,055	757	297
Bovina	542	280	261
St. Aloysius	3,998	1,941	2,041
Auditorium	5,210	1,704	3,468
Brunswick	488	192	296
Redwood	1,173	743	429
Beechwood	1,137	1,021	113
Tingle	2,921	2,175	739
No. 7 Fire Station	4,574	2,649	1,919
Central Fire Station	1,350	824	521

Precinct	Total	White	Black
American Legion [1]	4,171	1,590	2,568
Culkin	1,839	1,351	488
Goodrum	1,849	1,617	214
Jett	1,497	1,287	207
Yokena	712	523	188
Redbone	2,011	1,721	284
Jonestown	5,008	3,214	1,781
Totals	44,976	26,475	18,356

/s/ James W. Loewen
JAMES W. LOEWEN

[Jurat Omitted]

[Certificate of Service Omitted]

[1] Central Vicksburg precinct between Central Fire Station on the north and No. 7 Fire Station on the south, referred to in election returns as Blackburn, contains ED's 25, 26, and parts of 31, 33, 37, and others.

SUPREME COURT OF THE UNITED STATES

No. A-421 (76-777)

[Filed Dec. 13, 1976]

PEGGY J. CONNOR, ET AL., APPELLANTS

v.

CLIFF FINCH, Governor of Mississippi, ET AL.

APPEAL from the United States District Court for the Southern District of Mississippi.

UPON CONSIDERATION of the requests of Peggy J. Connor, et al, and of the United States to treat the application as an expedited appeal from the judgment denying injunctive relief entered by the United States District Court for the Southern District of Mississippi in Civil Action No. 3830(A) on November 18, 1976,

IT IS ORDERED by this Court that the said requests be, and they are hereby, granted, and probable jurisdiction is noted.

The parties may file and exchange such motions under Rule 16 as they desire, and they shall file and exchange briefs on the merits on or before the close of business Monday, February 7, 1977. Responsive briefs, if any, shall be filed and exchanged on or before the close of business Monday, February 21, 1977. Oral argument is set for Monday, February 28, 1977.

It is further ordered that any and all other appeals from the above judgment be taken by filing notices of appeal and perfected pursuant to the Rules of the Court by filing statements as to jurisdiction on or before the close of business Wednesday, January 5, 1977.

December 8, 1976 [Jurat Omitted]

UNITED STATES COURT OF APPEALS
FIFTH JUDICIAL CIRCUIT
P.O. Box B
Ackerman, Mississippi 39735

December 17, 1976

JAMES P. COLEMAN
Judge

[Filed Dec. 20, 1976]

The Clerk
United States District Court
Jackson, Mississippi 39205

Dear Mr. Clerk:

I herewith forward to you a copy of the Special Master's report dated December 8, 1976.

I think it would be well if you would please send xerox copies of this report to all counsel of record.

Sincerely yours,

/s/ Jas. P. Coleman
United States Circuit Judge

JPC/nc

CC: Honorable Dan M. Russell, Jr.

CC: Honorable William Harold Cox

December 8, 1976

CIVIL ACTION No. 3830(A)

ANALYSIS BY SPECIAL MASTER OF PLAINTIFF'S OBJECTIONS IN HIS MOTION TO ALTER OR AMEND JUDGMENT

UNDER DATE OF NOVEMBER 29, 1976

Plaintiff's objections and/or motions are taken up herein in the order of their presentation.

Motion No. 1: To grant Plaintiffs a hearing on their objections to the court decreed Senate and House Plans.

Special Master's Comment: This is for the Court to determine.

Motion No. 2: To substitute in toto for the Court's Senate Plan, the proposed Modified Henderson Senate County Boundary Plan; and to substitute for the House districts to which Plaintiffs have objected the Alternative Proposals attached as Exhibit B to the Plaintiff's Supplement to Motion to Alter or Amend Judgment, filed October 8, 1976.

Grounds offered by the Plaintiff are:

1. The Court Plan is based, not on 1970 Census data or any other form of population data but is based on the votes received by the Democratic candidates for Governor in the August 5, 1976 Democratic Primary Election.

Special Master's Comments:

The statement that the Court Plan is not based on 1970 Census population data is plainly and simply a fabrication. Election data was used to help arrive at the population of voting precincts, there being no Census figures available for these smallest of political entities, but in every case these election data were used in connection with known population data for 1970 for larger political subdivisions.

The Court has understood and recognized from the beginning that in most cases in Mississippi, population

figures from the 1970 Federal Census for Beats are no longer valid (beat lines having been changed by local determination or Court order in almost every county in the state since the 1970 Census figures were arrived at). Further, the Court is well aware that Census figures have never been available for voting precincts (the final political subdivisions to which we have had to go time and time again in this reapportionment plan and to which any other single-member plan would also have to go.)

The Court is also aware that in many cases in the Court Plan 1975 voting figures have been applied against known 1970 Census population figures in order to arrive at a calculated estimate of the population of each precinct.

As a matter of fact, the population figures of the 1970 Census have been used throughout both the Senate and the House plans as the basis for reapportionment. Each precinct's percentage of the total vote cast either in the county or in the applicable beat was applied to the population of the county or applicable beat (when the latter was known) to arrive at a calculated estimate of the population of each precinct.

No matter what method is employed in arriving at precinct population figures in Mississippi—in the present light of things—final dependence must be placed upon estimates sensibly and honestly made from the most recent and applicable data at hand.

Plaintiff No. 2: The Senate Plan "fails to provide substantial equality of population among the districts. . . .".

Special Master's comments:

As previously pointed out herein and as repeatedly brought out at previous hearings, when precincts and beats (where lines have been changed since 1970) have to be used, *some sort of an estimate has to be used* in arriving at population figures. The method employed in the Court Plan has proven to be accurate enough in test checks to be generally used and relied upon. In those

Plans where Census Enumeration Districts have been used by the Plaintiffs or by anyone else, these Enumeration Districts have had to be split in multiplied numbers of cases, and in each case an estimate had to be made of the population in each part of the Enumeration District.

As to the statement that Democratic Primary Election figures were used as a basis for the determination from Census of population of voting precincts, it is well known in Mississippi that Republicans and Independents took part in the Democratic Primary in 1975, just as they have always done. Mississippi does not have voter registration by party affiliation.

Plaintiff No. 3: The Senate Plan "cancels out, minimizes, disperses, and dilutes black voting strength."

Special Master's comments:

The Court has already found that this allegation is not true and has so stated in more than one of its decrees.

The Plaintiff as to the House Plan generally:

"Although the House plan . . . . is based on voting results . . . . our analysis based on 1970 Census data shows that a substantial number of House districts meet constitutional and equitable requirements . . . . basing the House districts on beat and precinct lines. However, a substantial number of House districts in the Court's House plan continue unconstitutionally and inequitably to fail to provide substantial equality of population among the districts and to cancel out, minimize, disperse, and dilute black voting strength."

Special Master's comments:

These allegations are repetitions [sic] of those previously made and dismissed by the Court, generally done in open meetings with all parties. Nonetheless, we will take up each separate case as presented by Plaintiffs:

AFFADIVIT OF FRANK R. PARKER

Special Master's comments:

As to paragraphs Nos. 1 and 2 thereof no comment is necessary and none is made.

Paragraph No. 3: Mr. Parker states that he and members of his staff "*calculated*" the population for the House district for the Court's plan included in its final judgment of November 18, 1976. He further states that in all instances in which the current precinct (and beat) lines split 1970 census enumeration districts he "*estimated*" the portions of the precinct (and beat) population lying on each side of the precinct line within the census enumeration district. (Emphasis added).

Plaintiffs admit "calculations" and "estimates" of precint and beat populations, but using such "calculations" and "estimates" state that they "indicate" the following population and variance for each of the following House districts:

House Dist. No.		Plaintiff's Estimate		Court House Plan	
		Population	Variance	Population	Variance
8	Tunica County: Beats 1, 2, 3 & 4, plus the Armory precinct in Beat 5 Coahoma County: Coahoma, Lula & Lyon precincts in Beat 1; & Jonestown precinct in Beat 3			10,508 6,305	
	TOTALS	16,733	—7.91	16,813	—7.5
	Special Master's comments: The population difference is only 80 between the two estimates. We deem this amount to be insignificant.				
15	Coahoma County: Beat 2; & the Clarksdale precincts in Beats 1 & 3	14,471	—20.36	16,677	—8.2
16	Coahoma County: Beats 4 & 5; & Mattson precinct in Beat 3	19,438	+ 6.97	17,465	—3.9

Special Master's comments: Census enumeration districts are split in these two districts. These splits appear in thickly populated areas. Any dependence placed upon arbitrary estimates of population on either side of a line appear hazardous.

It will be observed that Plaintiffs offer no population "estimates" either by beats or precincts here, but only for the district as a whole. Therefore, no detailed comparison can be made to determine the precincts in which the greatest variance lies as between the two population "estimates". It is apparent, however, that Plaintiffs figures overall for Districts 8, 15 and 16 total but 50,642, while those in the mathematically proven Court Plan total 50,955, or 313 more. Since the Court's plan totals 40,447 population for Coahoma County (as does the 1970 Census) it would appear that Plaintiffs failed to "estimate" 313 people in that county on one or the other sides of the line.

Nonetheless, a new composition of Districts 15 and 16 could be effectuated in the following manner:

1. Begin by using Plaintiff's estimates of population;
2. To the Plaintiff's estimate for District 15, add Cagle Crossing from Beat 4 and Bobo, Rena Lara and Roundaway precincts and population from Beat 5, but using the Court's population figures for these precincts, since no such detailed figures are available in connection with the Plaintiff's estimates. Then pull these precincts from District 16;
3. Add the 313 "shortage" in Plaintiff's overall population estimate for Coahoma County.

This would result in districts as follows:

District 15. Coahoma County: Beat 2; & the Clarksdale precincts in Beats 1 & 3; & Cagle Crossing precinct in Beat 4; & Bobo, Rena Lara & Roundaway precincts in Beat 5	17,260	—5.01
District 16. Coahoma County: Mattson precinct in Beat 3; & the Clarksdale precincts in Beats 4 & 5	16,882	—7.1

The suggested changes in Districts 15 and 16 are offered solely as an alternative that might lessen Plaintiff's objections and in no wise is to be construed as an admission that these Districts in the Court Plan contain fatal flaws.

Now, to proceed further with other comparisons of the Court Plan and the Plaintiff's estimates of populations and population variances:

House Dist. No.		Plaintiff's Estimate Population	Plaintiff's Estimate Variance	Court House Plan Population	Court House Plan Variance
22	Bolivar County: Beat 1; & the precincts of Pace & Longshot in Beat 2; & the precincts of Shaw, Skene & Stringtown in Beat 5			15,460	
	Sunflower County: The precinct of Boyer-Linn in Beat 4			1,227	
	TOTALS	20,067	+10.4	16,687	—8.2
23	Bolivar County: The precincts of Central Cleveland, East Central Cleveland & West Cleveland in Beat 2; & East Cleveland in Beat 4; & Boyle in Beat 5	16,209	—10.8	17,037	—6.2
24	Bolivar County: Beat 2; & the precincts of North Cleveland & Merigold in Beat 4	15,381	—15.4	16,912	—6.9
25	Sunflower County: Beats 1 & 3; & the precinct of Moorhead in Beat 2	16,594	— 8.7	17,605	—3.1
26	Sunflower County: Beat 5; & Sunflower & Indianola precincts in Beat 2; & Dockery, Doddsville & Ruleville precincts in Beat 4	18,205	+ 0.2	18,215	+0.2

Special Master's comments:

All of these districts (Nos. 22, 23, 24, 25, and 26) represent two different estimates of population, arrived at by two different methods. As stated hereinbefore, the Special Master does not agree that Plaintiff's estimates are correct or even that they more nearly represent the actual population.

However, we have before us a copy of the Plaintiff's estimated population figures for the precincts involved in the Bolivar and Sunflower county districts. Purely in an effort to assist in bringing this unhappy affair to a definite conclusion, we have taken the Plaintiff's own figures as to population in the various precincts, and now offer newly constructed districts based thereon for whatever consideration the Court cares to give them, as follows:

House Dist. No.		New Proposed Districts Population	Black Population
22	Bolivar County: Beat 1	9,483	6,893
	Pace & Longshot precincts in Beat 2	2,564	1,596
	Skene, Shaw & Stringtown precincts in Beat 5	5,772	3,837
	TOTALS	17,819	12,328
	Percentages: Variance —1.9		
	Black Population 69.2		
23	Bolivar County: Central Cleveland & East Central Cleveland precincts in Beat 2;	4,018	2,149
	North Cleveland & East Cleveland precincts in Beat 4;	6,448	2,431
	Boyle precinct in Beat 5	4,222	2,225
	Sunflower County: Boyer-Linn precinct in Beat 4	2,248	1,515
	TOTALS	16,936	8,320
	Percentages: Variance —6.8		
	Black Population 49.1		
24	Bolivar County: Beat 3;	9,575	7,878
	West Cleveland precinct in Beat 2;	3,800	736
	Merigold precinct in Beat 4	3,527	2,593
	TOTALS	16,902	11,207
	Percentages: Variance —7.0		
	Black Population 66.3		

House Dist. No.		New Proposed Districts Population	Black Population
25	Sunflower County: Beats 1 & 3;	13,494	9,035
	Moorhead precinct in Beat 2	3,100	2,063
	TOTALS	16,594	11,098
	Percentages: Variance —8.7		
	Black Population 66.9		
26	Sunflower County: Beat 5;	8,634	4,943
	Sunflower & Indianola precincts in Beat 2;	4,771	2,727
	Dockery, Doddsville & Ruleville precincts in Beat 4	4,800	2,978
	TOTALS	18,205	10,648
	Percentages: Variance +0.2		
	Black Population 58.5		

Special Master's comments:

The physical structure of Sunflower County dictates the beat and precinct arrangement used therein. The county is exceedingly long, but very narrow. Further, we believe the wide variance in population between the two Sunflower County districts is justified by virtue of the fact that included in the population of District 26 are more than 1,500 inmates at the Mississippi State Penitentiary, located within Beat 5 and the Rome precinct.

Now we proceed to the complaint of the Plaintiff as to the composition of and the population figures arrived at and used for the Issaquena-Washington counties area, wherein lie Districts Nos. 32, 33, 34, and 35. Again we compare:

House Dist. No.		Plaintiff's Estimate Population	Plaintiff's Estimate Variance	Court House Plan Population	Court House Plan Variance
32	Issaquena County Washington County: Beat 1; & the precinct of Avon in Beat 2			2,737 15,468	
	TOTALS	17,276	— 4.9	18,205	+0.2
33	Washington County: The precincts of Ward Center, Community Center & Arcola in Beat 2; & the precinct of Hollandale (City Hall) in Beat 5	16,680	— 7.2	17,409	—4.2
34	Washington County: Beat 3; & the precinct of New County Garage in Beat 4	20,170	+11.0	19,472	+7.2
35	Washington County: The precincts of Leland Health Clinic & Leland Light Plant in Beat 4; & the precincts of Darlove, Bourbon, County Recreation Center, & Industrial College in Beat 5	19,012	+ 4.6	18,232	+0.3

Special Master's comments:

Plaintiff's estimate (above) would have 20,170 population in District 34 and a claimed variance of +11.0%. We believe this, as well as other population estimates made by the Plaintiff for Washington County, to be far from correct. An example may be seen in population estimates for the five beats. Washington County had new beat lines drawn subsequent to the year 1970. The survey and population calculations for this redistricting plan were made by Comprehensive Planners, whose plan, including population figures therein, was approved by Federal Court. Yet in no case do these population figures appear to have been used by the Plaintiffs in the preparation of their Alternate Plan for Washington County. Let us compare:

	Court Approved Population	Plaintiff's Estimated Pop.	Plaintiff Over or Under
Beat 1	14,122	12,642	—1,480
Beat 2	14,021	13,592	— 429
Beat 3	14,255	14,928	+ 673
Beat 4	14,176	14,902	+ 726
Beat 5	14,007	14,517	+ 510
TOTALS	70,581	70,581	- 0 -

Washington County is a particularly difficult county to reapportion. Little Issaquena County and its tiny 2,737 population is included as part of one district to help make population in each district nearer the norm of 18,171. Each Washington County beat contains in excess of 14,000 people—too few for one district and too many for one-half of a district. The City of Greenville (population 39,648) contains all or parts of some 10 of the 20 precincts. "City" precinct lines are not coterminous with corporation boundary lines, but many of them extend far out into county territory.

Seven precincts have population between 5,140 and 7,501;

Five precincts have population between 3,222 and 4,734;

Only three precincts contain less than 1,000 people;

The remaining five precincts contain between 1,240 and 2,466 people.

The geographical location of these precincts, as related to one another, makes it extremely difficult to arrive at districts of approximately equal population. But this we believe we have done in the Court Plan.

For these and other good and valid reasons we believe the population estimates shown in the Court Plan are more realistic and less subject to error than those shown in the Plaintiff's Alternate Plan, and we recommend no change in the Court Plan from that adopted for Districts Nos. 32, 33, 34, and 35 in the Final Order.

Now we take up the Plaintiff's objections to Districts 45 and 46 in Lowndes County:

House Dist. No.		Plaintiff's Estimate Population	Plaintiff's Estimate Variance	Court House Plan Population	Court House Plan Variance
45	Lowndes County: The precinct of Caledonia in Beat 1; the precinct of Air Base in Beat 2; the precincts of Rural Hill. New Hope & Fairview in Beat 3; & the precinct of Coleman in Beat 4	20,358	+12.0	18,641	+2.3
46	Lowndes County: The precincts of Sale & Stokes-Beard in Beat 1; the precincts of Brandon, Lee High & Franklin in Beat 2; & the precinct of Caldwell in Beat 3; & the precinct of Hunt in Beat 5	18,844	+ 3.7	18,162	—0.0

Special Master's comments:

There are several valid objections to the population figures used by the Plaintiff in Lowndes County. Some of these were raised by the Special Master in a memorandum to the Court in October, which was presented and discussed in meeting with all parties. This part we now repeat:

"Plaintiff estimates population here to be +12.0% variance from the norm. In his exceptions Plaintiff estimates population of Air Base to be only 2,229. Yet in the redistricting of the beats of Lowndes County the Federal Court permitted the deduction of 4,074 "non-residents" at the Air Base in Beat 2 and 1,670 "non-residents" at the University in Beat 5 from both beat and county totals and a net population of only 43,956 was used in redistricting the county—an average of only 8,791 persons per beat. But in this Legislative reapportionment we must use the entire 1970 population of the county. This population figure is 49,700 and we must use the resident population of the Air Base precinct and its "non-resident" population as well. It is apparent, therefore, that the objection to District 45 is without merit."

There are other reasons to doubt the validity of the population figure of 20,170 used by the Plaintiff as his estimate of the population of District 45.

Some time in October 1976 Plaintiff filed "Plaintiff's Supplement to Motion to Alter or Amend Judgment."

In his supplementary motion Plaintiff, among many other things, proposed, in his Exhibit B thereof, new precinct alignments for Districts 45 and 46.

For District 45 he proposed: Lowndes County precincts of Airbase, Caledonia, Rural Hill, New Hope, Fairview, Coleman and Caldwell, total population *17,412*. The precinct composition of this Plaintiff-proposed-district is exactly the same as the Court Plan, *except* that Plaintiff has *added* Caldwell precinct and has arrived at a population of only *17,412* in the face of his contention in his latest "Alter or Amend" motion that the Court Plan for this district *which does not include* Caldwell, has a population of 20,358.

In that same Exhibit B the Plaintiff proposes a new alignment for District 46 which contains exactly the same precincts as in the Court Plan, except Plaintiff *omits* Caldwell. And he shows a population of *17,716*. Yet he now avers that the Court Plan, which *includes* Caldwell, totals 18,844, which latter figure is very near the Court Plan population of 18,162.

Whence came this great change in Plaintiff's estimates?

If Plaintiff's Alternate Plans were used the population of Districts 45 and 46 would total 35,128 which, when added to the Lowndes County population shown in the Court Plan for Districts 44 and 52 (to which Plaintiff has not objected) would total 48,025 for the whole of Lowndes County. What would we do with the 1,675 Lowndes County people thus lost out of its 1970 population of 49,700? Has the Plaintiff gotten as confused, perhaps, about the "non-residents" in University precinct as he did about those in Airbase precinct?

We now proceed to Warren-Yazoo Districts 53, 54, and 55, and again compare estimates of the Plaintiff with figures used in the Court Plan:

House Dist. No.		Plaintiff's Estimate Population	Variance	Court House Plan Population	Variance
53	Warren County: The precincts of Yokena, Redbone, Goodrum, Tingle, Beechwood, Culkin, Kings, St. Aloysius & American Legion (Blackburn) in whatever Beats situated	19,933	+ 9.70	16,928	—6.8
54	Warren County: The precincts of Jett, Fire Station No. 7, + Jonestown in whatever Beats situated	11,079	—39.03	16,492	—9.2
55	Warren County: The precincts of Bovina, Oak Ridge, Redwood, Walters, Brunswick, Cedar Grove, Auditorium, & Central Fire Station in whatever Beats situated			11,561	
	Yazoo County: The precincts of Dover, East Bentonia, West Bentonia, Phoenix, Mechanicsburg, Satartia, Fugates, Deasonville, & Valley in whatever Beats situated			5,521	
	TOTALS	19,845	+ 9.21	17,082	—6.0

Special Master's comments:

Warren County has presented perhaps the most difficult situation of all of the problems inherent in reapportioning the House of Representatives. First of all, Claiborne County was severed from the old Warren-Jefferson county district and added to Jefferson County in order to set up a new preponderantly black district. The population left in Warren County alone is too great for two districts and too small for three. Issaquena County to the North has already been used with Washington County to help equalize the population in the four-member situation there. Giant Hinds County to the East stands alone with its twelve districts.

Yazoo County to the Northeast offers the only county that can be joined with Warren. But before the overlapping of district lines across county boundaries has ended it is necessary to have Warren, Yazoo, Sharkey, Humphreys and Holmes counties involved in a seven-member area. The population overall of 118,943 works out to an average population of 16,992 per district—well below the population norm and leaving little "working room" for the proper arrangement of the various voting precincts into districts.

To compound the problem, the matter of the restructuring of the five supervisor's districts of Warren County has been and continues to be ensnarled in Federal Appeal Courts. So serious and involved is this matter that there were no elections for beat officers [sic] held in Warren County in 1975—all being held up pending a final settlement of the problem.

Prior to this time the Special Master has spent a disproportionate amount of time and effort trying to arrive at a fair, equitable and workable solution for the Warren-Yazoo area. He believed he had a satisfactory solution to the problem in the plan that appeared in the Court's Final Order. Not so. After careful study of the Plaintiff's objections and a review of the population figures used by the Special Master in the Court Plan, we are now of the opinion that our population figures for the precincts, while at least fairly representative of the situation prevailing in the year 1975, is perhaps somewhat off the mark in some of the precincts as regards population in the year 1970.

For the past few years there has been a tremendous shifting of population between the various areas of Warren County in and adjacent to the City of Vicksburg. This trend continues.

We do not suggest here that we are in firm agreement with precinct population estimates propounded by Plaintiff. We have nonetheless decided to use the Plaintiff's population estimates for Warren County and have just now—after numerous cases of trial and error—arrived at new districts based upon these estimates. But we cannot accept the Plainitff's precinct arrangement,

filed earlier, for the composition of districts for at least two reasons. First, population is too greatly in variance from the norm—going as far as nearly 11% in one district; and second, the absolute gerrymandering of the two other districts after gathering together every black majority precinct in the county into the first district to guarantee a heavily loaded black majority district in a county having only 40.8% population.

This revised plan, hereinbelow presented, must include all of Districts 47, 48, 49, 53, 54, 55 and 56 lying in the five counties earlier named:

House Dist. No.		New Proposed Districts Using Plaintiff's Population Estimate		
		Population	Black Population	% Black
47	Sharkey County	8,937	5,784	64.7
	Humphreys County: Beat 5; & Silver City precinct in Beat 3	4,307	3,350	77.8
	Yazoo County: Precincts of Carter, Lake City, Eden, Free Run, East Midway, West Midway, & Harttown in whatever Beats situated	3,120	2,060	66.0
	TOTALS	16,363	11,194	68.4
	Variance —9.9%			
48	Humphreys County: Beats 1, 2, & 4; & Lake City precinct in Beat 3	10,295	6,110	59.3
	Holmes County: Precincts of Coxburg, Tchula, Thornton, & Cruger	6,258	4,625	73.9
	TOTALS	16,553	10,735	64.9
	Variance —8.9%			
49	Holmes County: The entire county less the precincts of Coxburg, Tchula, Thornton, & Cruger	16,862	11,118	65.9
	Variance —7.2%			

House Dist. No.		New Proposed Districts Using Plaintiff's Population Estimate		
		Population	Black Population	% Black
53	Warren County: The precincts of Redbone, Yokena, Jett, Fire Station No. 7, American Legion (Blackburn), & St. Aloysius in whatever Beats situated	16,968	7,207	42.5
	Variance —6.6%			
54	Warren County: The precincts of Culkin, Beechwood, Jonestown, Kings, Cedar Grove, Auditorium, & Central Fire Station in whatever Beats situated	17,559	7,348	41.8
	Variance —3.4%			
55	Warren County: The precincts of Oak Ridge, Bovina, Redwood, Walters, Brunswick, Tingle, & Goodrum in whatever Beats situated	10,454	3,800	36.3
	Yazoo County: The precincts of Dover, East Bentonia, West Bentonia, Mechanicsburg, Phoenix, Satartia, Deasonville, Fugates, Valley, Enola, Fairview, & Holly Bluff in whatever Beats situated	6,929	3,799	54.8
	TOTALS	17,383	7,599	43.7
	Variance —4.3%			
56	Yazoo County: The precincts of Center Ridge, Robinette, Zion, East Courthouse, West Courthouse, South City Hall, North City Hall, West Lintonia, East Lintonia, & Benton in whatever Beats situated	17,255	8,720	50.5
	Variance —5.0%			

STATE SENATE

IN RE: AFFIDAVIT OF PROF. GORDON G. HENDERSON

Information received by the Special Master from the State Tax Commission and Comprehensive Planners during his preparation of the Senate Plan failed to show that the supervisor's district lines in Holmes County had been redrawn by Federal authorities in accordance with the one-man one-vote principle. Therefore, 1970 Census figures for beat population were used in said Senate Plan districts that affected Holmes County.

Later, during the Special Master's preparation of the House Plan additional beat population figures for Holmes County (and others) were procured from Comprehensive Planners which showed that Holmes County had, in fact, been redistricted subsequent to the 1970 Census.

Busy with the structuring of the House Plan at the time, which plan was not affected by the change in beat population figures, the Special Master simply neglected to go back into source data areas already explored and therefore failed to re-structure Districts 28 and 29 affecting Holmes County.

Referring back to our voluminous files we find that we should, and can, revise Senate Districts 28 and 29, which we now proceed to do:

Senate Dist. No.		Revised Senate Districts 28 & 29 Unit Population	District Population	Variance
28	Madison County	29,737		
	Holmes County: Beats 2 & 3	9,387		
	Yazoo County: The precincts of Benton, Deasonville, Fugates, Eden, Free Run, East Midway, West Midway, Harttown, Carter, & Dover in whatever Beats situated	6,671	45,795	+7.4%
29	Issaquena County	2,737		
	Sharkey County	8,937		
	Holmes County: Beats 1, 4, & 5	13,733		
	Yazoo County: All precincts in whatever Beats situated that are not included in District 28	20,633	46,040	+8.0%

—William D. Neal
Special Master
December 8, 1976

IN THE
UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

Civil Action No. 3830(A)

[Filed Dec. 21, 1976]

PEGGY J. CONNOR, ET AL., PLAINTIFFS

—*vs*—

CLIFF FINCH, ET AL., DEFENDANTS

Before COLEMAN, Circuit Judge; RUSSELL, Chief District Judge; and COX, District Judge.

ORDER AMENDING PREVIOUS JUDGMENT

The Court has before it, and has fully considered, plaintiffs' objections and motion to alter or amend judgment dated November 29, 1976. We also have before us, and have considered, the analysis of those objections by our Special Master, dated December 8, 1976.

Pursuant thereunto, it is

ORDERED, ADJUDGED and DECREED that our previous judgments in this legislative reapportionment case are hereby amended to read, for the legislative districts indicated, as follows:

Mississippi State Senate

Senate Dist. No.		Unit Population	District Population	Variance
28	Madison County	29,737		
	Holmes County: Beats 2 & 3 Yazoo County: The precincts of Benton, Deasonville, Fugates, Eden, Free Run, East Midway, West Midway, Harttown, Carter, & Dover in whatever Beats situated	9,387 6,671	45,795	+7.4%
29	Issaquena County	2,737		
	Sharkey County	8,937		
	Holmes County: Beats 1, 4, & 5	13,733		
	Yazoo County: All precincts in whatever Beats situated that are not included in District 28	20,633	46,040	+8.0%

Mississippi State House of Representatives

House Dist. No.		Population	Black Population	% Black	Variance
15	Coahoma County: Beat 2; & the Clarksdale precincts in Beats 1 & 3; & Cagle Crossing precinct in Beat 4; & Bobo, Rena Lara & Roundaway precincts in Beat 5	17,260			—5.01
16	Coahoma County: Mattson precinct in Beat 3; & the Clarksdale precincts in Beats 4 & 5	16,882			—7.1

House Dist. No.		Population	Black Population	% Black	Variance
47	Sharkey County	8,937	5,784	64.7	
	Humphreys County: Beat 5; & Silver City precinct in Beat 3	4,307	3,350	77.8	
	Yazoo County: Precincts of Carter, Lake City, Eden, Free Run, East Midway, West Midway, & Harttown in whatever Beats situated	3,120	2,060	66.0	
	TOTALS	16,363	11,194	68.4	—9.9%
48	Humphreys County: Beats 1, 2 & 4; & Lake City precinct in Beat 3	10,295	6,110	59.3	
	Holmes County: Precincts of Coxburg, Tchula, Thornton, & Cruger	6,258	4,625	73.9	
	TOTALS	16,553	10,735	64.9	—8.9%
49	Holmes County: The entire county less the precincts of Coxburg, Tchula, Thornton, & Cruger	16,862	11,118	65.9	—7.2%
53	Warren County: The precincts of Redbone, Yokena, Jett, Fire Station No. 7, American Legion (Blackburn), & St. Alyosius in whatever Beats situated	16,968	7,207	42.5	—6.6%
54	Warren County: The precincts of Culkin, Beechwood, Jonestown, Kings, Cedar Grove, Auditorium, & Central Fire Station in whatever Beats situated	17,559	7,348	41.8	—3.4%

House Dist. No.		Population	Black Population	% Black	Variance
55	Warren County: The precincts of Oak Ridge, Bovina, Redwood, Walters, Brunswick, Tingle, & Goodrum in whatever Beats situated	10,454	3,800	36.3	
	Yazoo County: The precincts of Dover, East Bentonia, West Bentonia, Mechanicsburg, Phoenix, Satartia, Deasonville, Fugates, Valley, Enola, Fairview, & Holly Bluff in whatever Beats situated	6,929	3,799	54.8	
	TOTALS	17,383	7,599	43.7	—4.3%
56	Yazoo County: The precincts of Center Ridge, Robinette, Zion, East Courthouse, West Courthouse, South City Hall, North City Hall, West Lintonia, East Lintonia, & Benton in whatever Beats situated	17,255	8,720	50.5	—5.0%

From the evidence already heard and considered in this case, the remaining objections filed by the plaintiffs are found to be without merit and will be overruled.

So ORDERED this the 17 day of December, 1976.

/s/ Jas. P. Coleman
United States Circuit Judge

/s/ Dan M. Russell, Jr.
Chief United States District Judge

/s/ Harold Cox
United States District Judge

IN THE
UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

Civil Action No. 3830(A)

[Filed Dec. 27, 1976]

[Caption Omitted]

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that plaintiffs Peggy J. Connor, et al., hereby appeal to the United States Supreme Court from the Final Judgment entered in this action on November 18, 1976, as amended by the Order Amending Previous Judgment, entered December 21, 1976.

Dated: December 27, 1976.

/s/ Frank R. Parker
FRANK R. PARKER
Lawyers' Committee for
Civil Rights Under Law
233 North Farish Street
Jackson, Mississippi 39201

Attorney for Plaintiffs

[Certificate of Service Omitted]

IN THE
UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

Civil Action No. 3830(A)

[Filed Dec. 28, 1976]

[Caption Omitted]

NOTICE OF APPEAL

Please take notice that the United States of America, Plaintiff-Intervenor in this action, hereby appeals to the United States Supreme Court the Final Judgment of the Three-Judge District Court entered on November 18, 1976, as amended by Order of that court entered on December 21, 1976. The appeal is taken pursuant to 28 U.S.C. Section 1253.

UNITED STATES OF AMERICA

/s/ Robert E. Hauberg
ROBERT E. HAUBERG
United States Attorney

[Certificate of Service Omitted]

SUPREME COURT OF THE UNITED STATES

No. 76-777

PEGGY J. CONNOR, ET AL., APPELLANTS

v.

CLIFF FINCH, Governor of Mississippi, ET AL.

APPEAL from the United States District Court for the Southern District of Mississippi.

UPON CONSIDERATION of the requests of Peggy J. Connor, et al, and of the United States to treat the application as an expedited appeal from the judgment denying injunctive relief entered by the United States District Court for the Southern District of Mississippi in Civil Action No. 3830(A) on November 18, 1976.

IT IS ORDERED by this Court that the said requests be, and they are hereby, granted, and probable jurisdiction is noted.

The parties may file and exchange such motions under Rule 16 as they desire, and they shall file and exchange briefs on the merits on or before the close of business Monday, February 7, 1977. Responsive briefs, if any, shall be filed and exchanged on or before the close of business Monday, February 21, 1977. Oral argument is set for Monday, February 28, 1977.

It is further ordered that any and all other appeals from the above judgment be taken by filing notices of appeal and perfected pursuant to the Rules of the Court by filing statements as to jurisdiction on or before the close of business Wednesday, January 5, 1977.

December 8, 1976

SUPREME COURT OF THE UNITED STATES

Nos. 76-933, 76-934 and 76-935

CLIFF FINCH, Governor of Mississippi, ET AL., APPELLANTS

v.

PEGGY J. CONNOR, ET AL.

UNITED STATES, APPELLANT

v.

CLIFF FINCH, Governor of Mississippi, ET AL.; AND
PEGGY J. CONNOR, ET AL., APPELLANTS

v.

CLIFF FINCH, Governor of Mississippi, ET AL.

APPEALS from the United States District Court for the Southern District of Mississippi.

The statements of jurisdiction in these cases having been submitted and considered by the Court, probable jurisdiction is noted. The cases are consolidated with No. 76-777 and a total of one and one-half hours is allotted for oral argument. The parties shall file and exchange briefs on the merits on or before the close of business Monday, February 7, 1977. Responsive briefs, if any, shall be filed and exchanged on or before the close of business Monday, February 21, 1977. Oral argument is set for Monday, February 28, 1977.

January 17, 1977

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Supreme Court, U. S.
FILED
FEB 7 1977
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

Nos. 76-777, 76-933, 76-934, and 76-935

PEGGY J. CONNOR, ET AL., *Appellants*

v.

CLIFF FINCH, GOVERNOR OF MISSISSIPPI, ET AL.

On Appeals from the United States District Court for the Southern District of Mississippi

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BRIEF FOR PRIVATE APPELLANTS, PEGGY J. CONNOR, ET AL.

FRANK R. PARKER
THOMAS J. GINGER
Lawyers' Committee for
Civil Rights Under Law
Post Office Box 1971
Jackson, Mississippi 39205
(601-948-5400)

ROBERT A. MURPHY
ELIZABETH R. RINDSKOPF
WILLIAM E. CALDWELL
Lawyers' Committee for
Civil Rights Under Law
Suite 520 Woodward Building
733 Fifteenth Street, N.W.
Washington, D.C. 20005
(202-628-6700)

Attorneys for Appellants

February 7, 1977

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TABLE OF CONTENTS

Page

OPINIONS BELOW 1

JURISDICTION 1

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED . 3

QUESTIONS PRESENTED 4

STATEMENT 5

A. Prior Proceedings 7

B. The District Court's Temporary 1975 Plan ... 15

C. The District Court's Permanent Plan 20

ARGUMENT

Summary of Argument 26

I. MISSISSIPPI BLACKS HAVE BEEN DENIED EQUAL ACCESS TO THE POLITICAL PROCESS 28

II. THE DISTRICT COURT'S FINAL PLAN IS UNCONSTITUTIONALLY MALAPPORTIONED AND UNCONSTITUTIONALLY DILUTES BLACK VOTING STRENGTH IN CERTAIN DISTRICTS 36

A. The District Court's Senate Plan is Excessively Malapportioned and Unnecessarily Dilutes Black Voting Strength in Certain Districts 36

B. The District Court's House Plan Unnecessarily Dilutes Black Voting Strength in Certain Districts 42

C. Court-Ordered Legislative Reapportionment Plans Must Achieve the Greatest Practicable Equality of Population Among the Districts 47

Page

C. Court-Ordered Legislative Reapportionment Plans Must Achieve the Greatest Practicable Equality of Population Among the Districts 47

D. Court-Ordered Legislative Reapportionment Plans Should Avoid Any Unnecessary Fragmentation or Dilution of Black Voting Strength 51

III. The District Court Erred in Refusing to Order More Than Two Special Elections in Two House Districts 57

A. Senate Districts 61

B. House Districts 62

C. Special Election Relief 68

IV. The District Court Erred in Denying Plaintiffs Their Reasonable Attorneys' Fees .. 70

Conclusion 75

Appendix A. Plaintiffs' Motion for an Award of Attorney's Fees, filed June 15, 1976 ..... 1a

Appendix B. Counties Subdivided by Constitutional Provision or Statute for Legislative Representation 9a

Appendix C. Recent Discriminatory State Legislation Showing the Unresponsiveness of the Mississippi Legislature to the Needs and Interests of the Black Community and Denials of Equal Access to the Political Process 11a

Cases: Page

Alexander v. *Holmes County Bd. of Educ.*, 396 U.S. 19 (1969) 34
Beer v. *United States*, 425 U.S. 130 (1976) 19
Bradley v. *School Board of City of Richmond*, 416 U.S. 696 (1974) 73-74
Burns v. *Richardson*, 384 U.S. 73 (1966) 56
Chapman v. *Meier*, 420 U.S. 1 (1975) 14, 20, 47, 48, 51, 52, 59
Connor v. *Coleman*, 425 U.S. 675 (1976) 5, 20, 58
Connor v. *Johnson*, 256 F.Supp. 962 (S.D.Miss. 1966).. 48
Connor v. *Johnson*, 265 F.Supp. 492 (S.D.Miss. 1967)..8, 32
Connor v. *Johnson*, 330 F.Supp. 506 (S.D.Miss. 1971), *vacated and remanded sub nom. Connor* v. *Williams*, 404 U.S. 549 (1972) 9, 10, 32
Connor v. *Johnson*, 386 U.S. 483 (1967) 7
Connor v. *Johnson*, 402 U.S. 690 (1971) 10, 11, 58
Connor v. *Johnson*, 403 U.S. 928 (1971) 10
Connor v. *Waller*, 396 F.Supp. 1308 (S.D.Miss. 1975), *rev'd*, 421 U.S. 656 (1975) 13
Connor v. *Waller*, 421 U.S. 656 (1975) 14, 27, 57, 61, 72
Connor v. *Williams*, 404 U.S. 549 (1972) .. 11, 14, 20, 57, 59
East Carroll Parish School Board v. *Marshall*, 424 U.S. 636 (1976) 19
Ferguson v. *Winn Parish Police Jury*, 528 F.2d 592 (5th Cir. 1976) 74
Fortson v. *Dorsey*, 379 U.S. 433 (1965) 56
Gaffney v. *Cummings*, 412 U.S. 735 (1973) 47
Hadnott v. *Amos*, 394 U.S. 358 (1969) 69
Hall v. *Issaquena County Board of Supervisors*, 453 F.2d 404 (5th Cir. 1971) 69
Hamer v. *Campbell*, 358 F.2d 215 (5th Cir. 1966), *cert. denied*, 385 U.S. 851 (1966) 69
Howard v. *Adams County Board of Supervisors*, 453 F.2d 455 (5th Cir. 1972), *cert. denied* 407 U.S. 925 (1972) 69
Keller v. *Gilliam*, 454 F.2d 55 (5th Cir. 1972) 69

Page

Kilgarlin v. *Hill*, 386 U.S. 120 (1967) 51
Kirksey v. *Board of Supervisors of Hinds County*, 402 F.Supp. 658 (S.D. Miss. 1975), *aff'd*, 528 F.2d 536 (5th Cir. 1976) 39, 40
Louisiana v. *United States*, 380 U.S. 145 (1965) 52
Lytle v. *Commissioner of Election of Union County*, 541 F.2d 421 (4th Cir. 1976) 74
Mahan v. *Howell*, 410 U.S. 315 (1973) 14, 20, 59
Mann v. *Davis*, 238 F.Supp. 458 (E.D. Va. 1964) (3-judge court), *aff'd*, 379 U.S. 694 (1965) 70
Minnesota State Senate v. *Beens*, 406 U.S. 187 (1972). 64
Moore v. *Leflore County Board of Election Comm'rs.*, 502 F.2d 621 (5th Cir. 1974) 53-54
Moore v. *Leflore County Board of Election Comm'rs.*, 361 F.Supp. 603 (N.D. Miss. 1972), *aff'd*, 502 F.2d 621 (5th Cir. 1974) 53-54, 66
Morrow v. *Crisler*, 491 F.2d 1053 (5th Cir. 1974) 34
Moss v. *Burkhart*, 220 F.Supp. 149 (W.D. Okla. 1963) (3-judge court), *aff'd sub nom. Williams* v. *Moss*, 378 U.S. 558 (1964) 70
Newman v. *Piggie Park Enterprises, Inc.*, 390 U.S. 400 (1968) 28, 72, 73
Panior v. *Iberville Parish School Bd.*, 543 F.2d 1117 (5th Cir. 1976) 74
Ratliff v. *Beale*, 74 Miss. 247, 20 So. 865 (1896) 30
Reynolds v. *Sims*, 377 U.S. 533 (1964) 36
Reynolds v. *State Election Board*, 233 F.Supp. 323 (W.D. Okla. 1964) (3-judge court) 70
Riddell v. *National Democratic Party*, 508 F.2d 770 (5th Cir. 1975) 30
Robinson v. *Commissioners Court, Anderson County, Texas*, 505 F.2d 674 (5th Cir. 1974) 53, 55
Sims v. *Amos*, 336 F.Supp. 924 (M.D. Ala., 1972) *aff'd*, 409 U.S. 942 (1972) 13
Sims v. *Baggett*, 247 F.Supp. 96 (M.D. Ala. 1965) 54
Stanton v. *Bond*, —— U.S. —— (No. 75-1413, decided Nov. 30, 1976) 75

Page

Swann v. *Adams*, 385 U.S. 440 (1967) 51
Swann v. *Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1 (1971) 55
Taylor v. *McKeithen*, 407 U.S. 191 (1972) 52-53
Taylor v. *Monroe County Board of Supervisors*, 421 F.2d 1038 (5th Cir. 1970) 69
Toney v. *White*, 488 F.2d 310 (5th Cir. 1973) (*en banc*) 69
Town of Sorrento v. *Reine*, —— U.S. —— (No. 75-93, decided Mar. 26, 1976) 69
United Jewish Organizations of Williamsburg v. *Carey, cert. granted*, 423 U.S. 945 (1975) 19
United States v. *Hinds County School Board*, 423 F.2d 1264 (5th Cir. 1969) 34
United States v. *Mississippi*, 380 U.S. 128 (1965) *on remand*, 256 F.Supp. 344 (S.D. Miss. 1966) 29
United States v. *Mississippi*, 11 Race Rel. L. Rep. 837 (S.D. Miss. 1966) 29, 30
W.M.C.A., Inc. v. *Lomenzo*, Order of July 27, 1964 (unreported), *aff'd sub nom. Hughes* v. *W.M.C.A., Inc.*, 379 U.S. 694 (1965) 70
Wade v. *Miss. Cooperative Extension Ser.*, 372 F.Supp. 126 (N.D. Miss. 1974) *aff'd in part, vac'd in part*, 528 F.2d 508 (5th Cir. 1976), —— U.S. —— 34
Wallace v. *House*, —— U.S. —— (No. 75-914, decided April 26, 1976) *on remand*, 538 F.2d 1138 (5th Cir. 1976) 74
White v. *Regester*, 412 U.S. 755 (1973) 24, 35, 47, 55
Zimmer v. *McKeithen*, 485 F.2d 1297 (5th Cir. 1973) (*en banc*), *aff'd sub nom. East Carroll Parish School Bd.* v. *Marshall*, 424 U.S. 636 (1976) 56

STATUTES:

28 United States Code

§ 1253 3

§ 1331 12

Page

§ 1343 .....7, 12
§ 2201 7
§ 2202 7
§ 2281 .....7, 12

42 United States Code
§ 1971 12
§ 1971(d) 12
§ 1973b 2
§ 1973c 12, 14
§ 1973j(f) 12
§ 1973*l*(e) 3, 12, 23, 28, 70
§ 1983 .....7, 12, 62, 75
§ 1988 7
§ 2000a-3(a) 72

Civil Rights Attorney's Fees Awards Act of 1976, P.L. 94-559, 90 Stat. 2641 .....4, 28, 75

Miss. Const., art. 12
§§ 241, 243, 244 (1890) 29

Miss. Const., art. 13
§ 254 (1890) 49

Miss. Code Ann.
§ 5-1-1 (1972) 9, 12
§ 5-1-3 (1972) 9
§§ 5-1-1, 5-1-3 (Supp. 1976) 12

Page

§ 23-3-69 (1972) 32
§ 23-5-1 (1972) 7
§ 23-5-85 (1972) 29
§ 23-5-175 (1972) 49
§ 3110 (1956 Recomp.) 32
§§ 3129, 3160, 3213, 3235 (1956 Recomp.) 29, 30
§ 3326 (1956 Recomp) 49

Miss. Laws, 1962, 2d Extraord. Sess., ch. 57 8
Miss. Laws, 1966-67, Sp. Sess., ch. 4 8
Miss. Laws, 1973, chs. 304, 305, 456, 457 12
Miss. Laws, 1975, chs. 484, 510 12

OTHER AUTHORITIES:
H.R. Rep. No. 94-196, 94th Cong., 1st Sess. (1975). 73
H.R. Rep. No. 94-1558, 94th Cong., 2d Sess. (1976) 75
S. Rep. No. 94-295, 94th Cong., 1st Sess. (1975)..73, 74
S. Rep. No. 94-1011, 94th Cong., 2d Sess. (1976).. 75
121 Cong. Rec. (1975) 70, 73, 74
122 Cong. Rec. (1976) 75

E. Bryant and S. El-Attar, POPULATION OF MISSISSIPPI LEGISLATIVE AND CONGRESSIONAL DISTRICTS, 1970, AND PROJECTIONS TO 1975 (July, 1973).....38, 61-62

Dixon, R., DEMOCRATIC REPRESENTATION (1968) 8

Hearings on Extension of the Voting Rights Act of 1965 Before the Subcommittee on Constitutional Rights of the Senate Comm. on the Judiciary, 94th Cong., 1st Sess. (1975) 31

Page

Joint Center for Political Studies, NATIONAL ROSTER OF BLACK ELECTED OFFICIALS (August, 1976) 29, 66

Kirwan, *Apportionment in the Mississippi Constitution of 1890,* 14 J. Southern Hist. (1948) 31

Kirwan, REVOLT OF THE REDNECKS (1965) 30, 31

Loewen, *Cultural Geography and the Study of Mississippi History and Social Structure,* 2 The Mississippi Geographer 27 (Spring 1974) 33

Mississippi Institute of Politics, *Voter Registration in Mississippi* (March, 1971) 35

Mississippi Office of Human Resources and Community Services, *The Extent and Distribution of Poverty in Mississippi* (June, 1976) 34

Solomon and Van Evera, *Fear, Apathy, and Discrimination: A Test of Three Explanations of Political Participation,* 67 Am. Pol. Sci. Rev. (Dec. 1973).. 35

U.S. Bureau of the Census, 1970 CENSUS OF POPULATION, GENERAL POPULATION CHARACTERISTICS: MISSISSIPPI, PC(1)-B26 (1971) 43, 45, 46, 56

United States Commission on Civil Rights, POLITICAL PARTICIPATION (1968) 29

United States Commission on Civil Rights, VOTING IN MISSISSIPPI (1965) 29, 30

Weeks, *The White Primary,* 8 Miss. L.J. 135 (1935) .. 30

Wilber, *Reapportionment of the Mississippi Legislature* (1961) 32

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

Nos. 76-777, 76-933, 76-934, 76-935

PEGGY J. CONNOR, ET AL., *Appellants*

v.

CLIFF FINCH, GOVERNOR OF MISSISSIPPI, ET AL.

On Appeals from the United States District Court for the Southern District of Mississippi

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BRIEF FOR PRIVATE APPELLANTS, PEGGY J. CONNOR, ET AL.

OPINIONS BELOW

The District Court's opinions of August 24, 1976 and September 8, 1976 are reported at 419 F. Supp. 1072 and 1089, and are reproduced in the Appendix, Vol. III, pp. 94-138. The District Court's subsequent Opinion of November 12, 1976 (App., Vol. III, pp. 220-31), final judgment of November 18, 1976 (App., Vol. III, pp. 232-48), and order amending previous judgment of December 21, 1976 (App., Vol. III, pp. 279-82) are unreported.

JURISDICTION

The final judgment of the three-judge District Court was entered on November 18, 1976. On the same day private plaintiffs, Peggy J. Connor, et al., filed their

notice of appeal (App., Vol. III, p. 249) from paragraphs 7 and 8 of the final judgment in which the District Court ordered special interim legislative elections in only two new House districts and deferred setting a date for those elections until the time for taking any appeals had run or until any appeals had been decided on the merits (*Connor* v. *Finch,* No. 76-777).[1] The private plaintiffs also filed a timely motion to alter or amend judgment contesting certain districts established in the District Court's plan on November 29, 1976 (App., Vol. III, pp. 250-58), and the District Court entered an order amending previous judgment on December 21, 1976 (App., Vol. III, pp. 279-82). The private plaintiffs filed their notice of appeal from the entire judgment, as amended, on December 27, 1976 (App., Vol. III, p. 283). The United States as plaintiff-intervenor filed its notice of appeal on December 28, 1976 (App., Vol. III, p. 284). The defendants filed their notice of appeal (J.S., *Finch* v. *Connor,* No. 76-933, App. F, p. 81a) on December 30, 1976.

On December 8, 1976, this Court noted probable jurisdiction in No. 76-777 (App., Vol. III, p. 259). On January 17, 1976, the Court noted probable jurisdiction in Nos. 76-933, 76-934, and 76-935, and consolidated the three subsequent appeals with No. 76-777 for briefing and oral argument on February 28, 1976 (App.,

[1] On December 8, 1976, this Court denied plaintiffs' application for interim injunctive relief pending appeal (No. A-421) but noted probable jurisdiction in No. 76-777 and expedited the appeal by requiring that briefs on the merits be filed by February 7, 1977, and responsive briefs by February 21, 1977, and by setting oral argument for February 28, 1977. The Court further ordered that notices of appeal and jurisdictional statements in any other appeals be filed by January 5, 1977.

Vol. III, p. 285). The jurisdiction of this Court is conferred by 28 U.S.C. § 1253 as a direct appeal from the final judgment of a three-judge District Court.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment provides in part:

> SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.
>
> * * * * *
>
> SECTION 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

The Fifteenth Amendment provides:

> SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.
>
> SECTION 2. The Congress shall have power to enforce this article by appropriate legislation.

Title IV, § 402, of the 1975 amendments to the Voting Rights Act of 1965, 89 Stat. 404, 42 U.S.C. § 1973*l*(e), provides:

> "(e) In any action or proceeding to enforce the voting guarantees of the fourteenth or fifteenth amendment, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs."

The Civil Rights Attorneys' Fees Awards Act of 1976, P.L. 94-559, 90 Stat. 2641, 42 U.S.C. § 1988, provides:

> "In any action or proceeding to enforce a provision of sections 1977, 1978, 1979, 1980, and 1981 of the Revised Statutes, title IX of Public Law 92-318, or in any civil action or proceeding by or on behalf of the United States of America to enforce, or charging a violation of, a provision of the United States Internal Revenue Code, or title VI of the Civil Rights Act of 1964, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs."

QUESTIONS PRESENTED

1. Whether the District Court erred in refusing to order special interim legislative elections in more than two new House districts prior to the regular 1979 quadrennial state legislative elections to remedy the malapportionment and dilution of black voting strength present in court-ordered legislative reapportionment plans ordered for the 1967, 1971, and 1975 state legislative elections.

2. Whether the District Court erred in ordering into effect a court-devised Mississippi Senate reapportionment plan based not on 1970 Census data, but on the election returns for the 1975 Democratic gubernatorial primary, which provided a total deviation of 16.5%, and which in certain districts diluted black voting strength, rather than ordering plaintiffs' proposed alternative Senate plan based on 1970 Census data which provided a total deviation of only 13.7%, which adhered more closely to political subdivision boundaries than the court's own plan, and which avoided the dilution of black voting strength in the court's plan.

3. Whether the District Court erred in rejecting—without a hearing or stating reasons therefor—plaintiffs' and plaintiff-intervenor's objections that certain districts in the court-devised House plan were malapportioned and/or diluted black voting strength, and in rejecting proposed alternatives which cured the malapportionment and dilution in the court's districts without disrupting the structure of the court's House plan.

4. Whether in the face of the 1975 attorneys' fee amendment to the Voting Rights Act of 1965, 42 U.S.C. § 1973*l*(e), and the Civil Rights Attorneys' Fees Awards Act of 1976, P.L. 94-559, 90 Stat. 2641 (October 19, 1976), the District Court erred in denying plaintiffs' motion for an award of attorneys' fees on a finding that the Mississippi Legislature had made a good faith effort to reapportion itself.

STATEMENT

When this case was last before the Court last Term on plaintiffs' petition for a writ of mandamus, this Court directed the District Court to

> " 'bring this case to trial forthwith' * * * to the end of entering a final judgment embodying a permanent plan reapportioning the Mississippi Legislature in accordance with law to be applicable to the election of legislators in the 1979 quadrennial elections, and also ordering any necessary special elections to be held to coincide with the November 1976 Presidential and congressional elections, or in any event at the earliest practicable date thereafter." *Connor* v. *Coleman,* 425 U.S. 675, 679 (1976).

In response, the District Court ordered for the 1979 legislative elections new reapportionment plans for

the Mississippi Senate and House of Representatives based on political subdivision boundaries and providing for both houses single-member districts statewide. 419 F. Supp. 1072, 1089, final judgment entered November 18, 1976 (App., Vol. III, pp. 232-48), revised in Order Amending Previous Judgment of December 21, 1976 (App., Vol. III, pp. 279-82). In entering its permanent plan, the District Court rejected without explanation and without a hearing plaintiffs' proposed alternative Senate plan (Modified Henderson Senate County Boundary Plan, App., Vol. III, pp. 186-96) which also was based exclusively on county, supervisors' district, and voting precinct boundaries and established single-member districts statewide, but which provided greater equality of population among the districts, less dilution of black voting strength, and less fracturing of county lines. The District Court also rejected alternative plans for certain House districts proposed by plaintiffs (App., Vol. III, pp. 191-96) and plaintiff-intervenor which would have provided for less fragmentation of black voting strength in certain districts.

For special elections, the District Court in its final judgment ordered only two special elections prior to the regular 1979 legislative elections in two majority black House districts and refrained from setting dates for those two special legislative elections "until time for an appeal has expired or until the Supreme Court shall have decided an appeal on the merits" (App., Vol. III, p. 247).

The District Court also denied plaintiffs' motion for an award of attorneys' fees, stating that "the Mississippi Legislature made a good faith effort to reapportion itself in 1973 and 1975. The 1975 effort was upheld

by this Court but failed on account of the disapproval of the Attorney General of the United States" (Opinion of November 12, 1976, App., Vol. III, p. 230).

A. Prior Proceedings.

For more than eleven years, plaintiffs have been seeking nondiscriminatory and equally apportioned state legislative districts for the election of members of the 122-member Mississippi House of Representatives and 52-member Mississippi Senate. Plaintiffs, who are eight black Mississippi registered voters and an unincorporated association, the Mississippi Freedom Democratic Party, filed this action (App., Vol. I, pp. 37-46) on October 19, 1965, as a class action challenging the state legislative and congressional districts [2] and seeking constitutional and equitable reapportionment pursuant to the Fourteenth and Fifteenth Amendments and 42 U.S.C. §§ 1983 and 1988. District Court jurisdiction was conferred by 28 U.S.C. §§ 1343, 2201 and 2202, and a three-judge District Court was convened pursuant to 28 U.S.C. § 2281.

The defendants are the Governor, the State Attorney General, and the Secretary of State—who constitute *ex officio* the Mississippi Board of Election Commissioners [3]—the Lieutenant Governor—who is *ex officio* the Presiding Officer of the Mississippi Senate—the President Pro Tempore of the Mississippi Senate, and the Speaker and Speaker Pro Tempore of the Mississippi House of Representatives.

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[2] The District Court's unreported opinion and judgment sustaining the Mississippi Legislature's 1966 statute redistricting the state's five congressional districts was summarily affirmed by this Court, *Connor* v. *Johnson*, 386 U.S. 483 (1967). Thereafter, congressional redistricting was no longer an issue in this case.

[3] Miss. Code Ann. § 23-5-1 (1972).

On July 22, 1966 the District Court held unconstitutionally malapportioned the reapportionment plan enacted by the Mississippi Legislature in 1962 and adopted by the voters as a constitutional amendment in 1963.[4] *Connor* v. *Johnson,* 256 F. Supp. 962 (S.D. Miss. 1966).[5] The Mississippi Legislature enacted a new reapportionment plan in a special session in 1966,[6] and the District Court on March 3, 1967 invalidated that plan for unconstitutional malapportionment and promulgated its own plan for the 1967 legislative elections. *Connor* v. *Johnson*, 265 F. Supp. 492 (S.D. Miss. 1967). Under the District Court's 1967 plan, a majority of the membership of the Mississippi Legislature was elected from multi-member and floterial districts,[7] and the court-ordered plan was malapportioned by total deviations of 20.84% in the House (excluding floterial

[4] Miss. Laws, 1962, 2d Extraord. Sess., ch. 57.

[5] Holding that legislative reapportionment was primarily a legislative responsibility, the District Court declined to order its own plan and gave the Legislature until December 1, 1966 to enact a constitutional plan. 256 F. Supp. at 968.

[6] Miss. Laws, 1966-67, Sp. Sess., ch. 41.

[7] In the House plan, 65% of the districts (34 of 52) were multi-member and floterial districts, electing 85 percent of the House membership (104 of 122 representatives). In the Senate plan, 28 percent of the districts (10 of 36) were multi-member and floterial districts, electing 50 percent of the Senate membership (26 of 52 senators). 265 F. Supp. at 495-97.

As used in the District Court's plans, floterial districts are a special form of multi-member district in which one or more legislators are elected from subdistricts (usually a county) and one or more legislators are elected districtwide (usually from two or more counties). See R. Dixon, DEMOCRATIC REPRESENTATION 461 *passim* (1968).

districts) and 23.24% in the Senate (excluding floterial districts).[8]

In the 1967 legislative elections—in a state which was then 42% black (1960 Census)—only one black representative was elected to the 122-member House, and no black candidates were elected to the 52-member Senate.[9]

In 1971 the Mississippi Legislature enacted another legislative reapportionment plan,[10] but this plan was also struck down by the District Court on May 18, 1971 for malapportionment, and another court-ordered plan was formulated for the 1971 legislative elections. *Connor* v. *Johnson,* 330 F. Supp. 506 (S.D. Miss. 1971), *vacated and remanded sub nom. Connor* v. *Williams,* 404 U.S. 549 (1972). In the 1971 court-ordered plan, a majority of both houses of the Mississippi Legislature were elected from multi-member and floterial districts.[11] The court-ordered districts also were malap-

[8] 265 F. Supp. at 504-07. The span of variances in the House plan was from +9.695% (District 1) to —11.140% (District 20), and in the Senate from +12.546% (District 18) to —10.691% (District 27). Twenty-four of the 52 House districts, and 24 of the 36 Senate districts had variances exceeding 5%, plus or minus. *Id.*

[9] Rep. Robert Clark, of Holmes County, was the state's only black legislator from 1967 to 1975. Hearing of May 7, 1975, Ex. P-10 (deposition of Rims Barber, Associate Director of Delta Ministry), p. 18 (App. Vol. I, p. 231).

[10] Miss. Code Ann. §§ 5-1-1, 5-1-3 (1972).

[11] In the House plan, 72% of the districts (33 out of 46) were multi-member and floterial districts, electing 89% of the House membership (109 out of 122 representatives). In the Senate plan, 42% of the districts were multi-member and floterial districts, electing 62% of the Senate membership (33 out of 52 senators). 330 F. Supp. at 509-17.

portioned by total deviations in the House of 62.96% including floterial districts and 19.73% excluding floterial districts, and in the Senate of 20.29% including the floterial district and 18.90% excluding the floterial district.[12]

On appeal, holding that "when district courts are forced to fashion apportionment plans, single-member districts are preferable to large multi-member districts as a general matter," *Connor* v. *Johnson,* 402 U.S. 690, 692 (1971), this Court stayed the 1971 court-ordered plan and instructed the District Court "absent insurmountable difficulties, to devise and put into effect a single-member district plan for Hinds County" by June 14, 1971. *Id.* at 692. The District Court did not divide Hinds County into single-member districts, finding that "with the time left available it is a matter of sheer impossibility to obtain dependable data, population figures, boundary locations, etc." *Connor* v. *Johnson,* 330 F. Supp. 521, 522 (S.D. Miss. 1971). This Court denied plaintiffs' subsequent application for further interim relief. 403 U.S. 928 (1971).

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[12] For an explanation of the calculation of the variances of the floterial districts, see Hearing of May 7, 1975, Ex. P-6 (deposition of Harold E. Sweeney, Jr., Assistant Professor of Political Science, Shippensburg State College, Pa.), pp. 10-21, (App., Vol. I, pp. 76-82), Dep. Ex. 1. Mr. Sweeney's calculations of variances in the floterial districts were uncontradicted.

Calculations of variances in nonfloterial districts are in the District Court's opinion, 330 F. Supp. at 509-16. The span of variances (excluding floterial districts) in the House plan was from +9.906% (District 3) to —9.823% (District 18), and in the Senate plan from +9.584% (District 29) to —9.319% (District 19). *Id.* Seven of the 46 House districts and 9 of the 33 Senate districts had variances over 8%, plus or minus. Half of the House Districts and 55% of the Senate districts had variances over 5%, plus or minus.

In the 1971 legislative elections held under the District Court's plan—in a state which was then 37% black (1970 Census)—29 black candidates ran for the Mississippi Legislature and 28 were defeated.[13] Of the 28 who were defeated, 24 ran in the multi-member districts contained in the District Court's 1971 plan.[14]

On January 24, 1972, on the merits of plaintiffs' appeal from the District Court's 1971 judgment, this Court withheld final decision on the constitutionality of the District Court's 1971 plan as a permanent reapportionment plan because the District Court's deliberations were incomplete and "it would be preferable to have before us a final judgment with respect to the entire State." *Connor* v. *Williams,* 404 U.S. 549, 551-52. Noting that the District Court had retained jurisdiction of the multi-member legislative districts for Hinds, Harrison, and Jackson Counties, and had stated its intention to appoint a special master as of January 1, 1972, to "make findings" concerning the feasibility of subdividing those counties into single-member districts (330 F. Supp. at 519), this Court directed:

> "Such proceedings should go forward and be promptly concluded, for, as this Court has emphasized, 'when district courts are forced to fashion apportionment plans, single-member districts are preferable to large multi-member districts as a general matter.' Connor v. Johnson, 402 U.S. 690, 692." *Id.* at 551.

The judgment of the District Court embodying the 1971 court plan was vacated, except insofar as it ap-

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[13] Hearing of May 7, 1975, Exs. P-1, P-5.

[14] *Id.*

plied to the 1971 legislative elections, and the case remanded to the District Court "for further proceedings consistent with this opinion." *Id.* at 552. On remand, the District Court did not appoint a special master.

In 1973 the Mississippi Legislature enacted two legislative reapportionment plans, both based on the 1971 court-ordered plan.[15] The District Court held a hearing on plaintiffs' objections to the latter, enacted in April 1973, on February 7, 1975.

Before a decision was rendered, the Mississippi Legislature in April 1975 enacted another reapportionment plan [16] which was identical to the District Court's 1971 plan except for the House districts in Hinds, Harrison, Jackson, and George Counties.[17] Pursuant to order of the District Court, plaintiffs on April 15, 1975 filed an amended complaint (App., Vol. I, pp. 54-69) alleging that the 1975 legislative reapportionment plan enacted by the Mississippi Legislature denied them rights secured by the Fourteenth and Fifteenth Amendments and 42 U.S.C. §§ 1971, 1973 et. seq., and 1983. Jurisdiction of the amended complaint was based on 28 U.S.C. §§ 1331, 1343, and 2281, and 42 U.S.C. §§ 1971 (d), 1973c, and 1973j(f). For relief, plaintiffs asked the District Court to adopt and implement a legislative redistricting plan providing single-member districts statewide prior to the 1975 legislative elections.

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[15] Miss. Laws, 1973, Chs. 304, 305, enacted in February, 1973, and Miss. Laws, 1973, Chs. 456, 457, enacted in April, 1973.

[16] Miss. Laws, 1975, chs. 484, 510; Miss. Code Ann. §§ 5-1-1, 5-1-3 (Supp. 1976).

[17] Miss. Code Ann. § 5-1-3 (Supp. 1976), Districts 31, 45, and 46. Representatives were to be elected from supervisors' districts in Hinds and Harrison County, and in Jackson and George Counties subdistrict residency requirements were established.

A hearing was held on May 7, 1975, and despite plaintiffs' objections and proof that the multi-member districts unconstitutionally diluted black voting strength [18] and that the plan was unconstitutionally malapportioned, and despite plaintiffs' presentation of alternative plans providing greater equality of population based both on county boundaries [19] and Census enumeration districts,[20] the District Court on May 20, 1975 sustained the constitutionality of the 1975 enact-

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[18] Hearing of May 7, 1975, Transcript (App., Vol. II, pp. 1-127) and Exs. P-1 through P-17, P-26 through P-31. No witnesses testified for the defendants.

[19] The Mississippi Legislature's Interim Study Committee on Legislature Reapportionment in 1973 had recommended, but the Legislature had rejected, plans based exclusively on county boundaries which would have reduced the total deviations to 14.7% in the House and 12.8% in the Senate (Ex. P-2). Further, a computer analysis of Mississippi legislative districts performed by Dr. Gordon G. Henderson, Professor of Political Science at Tougaloo College, Mississippi, showed that even keeping county lines intact, and keeping combinations of counties to a minimum, districts could be drawn for both houses with minimum total deviations of only 10.62% for the House and 10.51% for the Senate (Tr. 81-97, (App., Vol. II, pp. 5-14), Exs. P-8, P-27). No witnesses were presented by the defendants, nor any justification advanced for the Legislature's preference for districts providing less equality of population.

[20] Census enumeration districts are the smallest geographical units for which the Bureau of the Census publishes population statistics (except for city blocks in large urban areas). See *Sims* v. *Amos*, 336 F. Supp. 924, 936 (M.D. Ala. 1972), aff'd, 409 U.S. 942 (1972).

The first plan (App., Vol. I, pp. 325-59), devised by Dr. David Valinsky of the City University of New York who drafted the plan approved in *Sims* v. *Amos*, *supra*, provided single-member legislative districts statewide with no district exceeding a variance of 3.09%. The House districts ranged from +3.09% to —2.30%, for a total deviation of only 5.39%. The Senate districts ranged from +1.66% to —1.73%, for a total deviation of only 3.39%. Dr. Valinsky testified that the center of each proposed district was randomly deter-

ments. *Connor* v. *Waller,* 396 F. Supp. 1308 (S.D. Miss.), *rev'd,* 421 U.S. 656 (1975). On June 5, 1975, this Court reversed, 421 U.S. 656, holding that the new laws "are not now and will not be effective as laws until and unless cleared pursuant to § 5" of the Voting Rights Act of 1965, 42 U.S.C. § 1973c, and holding further that the District Court "erred in deciding the constitutional challenges to the Acts based upon claims of racial discrimination." *Id.* This Court expressly stated, however, that the reversal was

> "without prejudice to the authority of the District Court, if it should become appropriate, to entertain a proceeding to require the conduct of the 1975 elections pursuant to this Court's decisions in *Mahan* v. *Howell,* 410 U.S. 315 (1973), *Connor* v. *Williams,* 404 U.S. 549 (1972), and *Chapman* v. *Meier,* 420 U.S. 1 (1975)." *Id.*

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mined, and the districts were drawn without regard to race or the location of racial concentrations (App., Vol I, pp. 281-324). According to statistics presented by the Department of Justice, the Valinsky plan provided 7 districts with black voting age population majorities in the Senate and 23 districts with black voting age population majorities in the House.

The second plan (App., Vol. I, pp. 410-35), drafted by Henry J. Kirksey, a cartographer who is one of the plaintiffs in the case, provided House districts which ranged from +2.96% to —2.79%, for a total House deviation of only 5.75%, and Senate districts which ranged from +2.39% to —2.62%, for a total Senate deviation of only 5.01%. Mr. Kirksey testified that in drafting his plan he located concentrations of black population and drew the district boundaries in such a way as to avoid fragmenting or dispersing black population concentrations. (Ex. P-25 (App., Vol. I, pp. 360-409). According to statistics presented by the Department of Justice, the Kirksey plan provided 7 districts with black voting age population majorities in the Senate and 26 districts with black voting age population majorities in the House.

The Legislature's 1975 plan was then submitted to the United States Attorney General for Section 5 review, and on June 10, 1975 the Attorney General objected to the Legislature's 1975 plan for failure to prove that the plan did not have a racially discriminatory purpose or effect.[21]

On June 11, 1975, the District Court granted the motion of the United States to intervene as plaintiff-intervenor.

B. The District Court's Temporary 1975 Plan.

The District Court held a hearing on June 20, 1975, and despite the Attorney General's Section 5 objection and despite the fact that an almost identical court-ordered plan had been vacated by this Court in 1972, the District Court on July 11, 1975 ordered the Legislature's 1975 reapportionment plan into effect as "Temporary Districts for the Election of Senators and Representatives in the Mississippi Legislature for the Year 1975 Only." [22] The Court changed only one multi-mem-

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[21] The objection stated:

"We have given careful consideration to these statutes and other relevant information which has come to our attention. On the basis of our analysis, part of which we outlined in our memorandum as amicus curiae filed June 3, 1975, with the United States Supreme Court in Connor v. Waller, No. A968, a copy of which you received, we are unable to conclude, as we must under the Voting Rights Act of 1965, that the implementation of H.B. 1290 and [S.B.] 2976 does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color. I must, therefore, on behalf of the Attorney General interpose an objection to the implementation of the redistricting plans contained in H.B. 1290 and S.B. 2976." Telegram from J. Stanley Pottinger, Assistant Attorney General, to A. F. Summer, Miss. Attorney General, June 10, 1975.

[22] Order of July 11, 1975, (App., Vol. II, pp. 207-38).

ber district in the Senate plan (Hinds County) and only six multi-member districts in the House plan.[23]

None of these changes reduced the excessively high variance from population equality, and numerous discriminatory multi-member and floterial districts remained.[24] For the House, 51 of the 84 districts established by the 1975 temporary court plan were multi-member and floterial districts, electing 73 percent of the House membership (89 out of 122 representatives).[25] For the Senate, 15 of the 39 districts were multi-member and floterial districts, electing 54 percent of

[23] For the Senate, District 22 in Hinds County was subdivided into single-member districts, with one senator elected from each of five supervisors' districts. *Id.* For the House, District 3 (Desoto and Marshall) was converted into a floterial district (two each from Desoto and Marshall, one at-large), District 28 (Madison and Rankin) was converted into two single-member districts and one multi-member district, District 31 (Hinds) was subdivided into twelve multi-member districts, Districts 43 (Pearl River and Stone) and 46 (Jackson and George) were subdivided into single-member districts, and District 45 (Harrison) was converted into a floterial district (one from each of five supervisors' districts, two at-large). *Id.*

[24] Plaintiffs' Motion to Alter or Amend Judgment, filed July 2, 1975 (App., Vol. II, pp. 239-51).

[25] *Id.* For the House plan, the remaining multi-member districts (number of representatives in parentheses) were: Districts 2 (2), 8 (2), 9 (2), 13 (2), 14 (3), 15 (4), 16 (2), 17 (3), 18 (2), 24 (4), 26 (2), 27 (2), 28B (2), 29 (2), 30 (3), 32 (2), 33 (2), 34 (2), 37 (2), 38 (2), 39 (4), 40 (3), 43 (2). The remaining floterial districts were: Districts 1, 1A, and 1B (3); 3, 3A, and 3B (3); 4, 4A, 4B, and 4C (5); 11, 11A, and 11B (4); 23, 23A, and 23B (5); 25, 25A, and 25B (3); 35, 35A, and 35B (3); 45, 45A, 45B, 45C, 45D, 45E (7).

the Senate membership (28 out of 52 senators).[26] The District Court itself noted that there were racial dilution problems with its plan in instances in which black majority counties were joined with white majority counties for districtwide white majorities (Order of July 11, 1975, App., Vol. II, pp. 212-26), but concluded that time and available data did not permit single-member districting in those areas prior to the 1975 legislative primary and general elections (*id.*).

However, in three separate orders the District Court held that no irreparable injury would result because when the permanent plan was formulated, special interim legislative elections would be ordered to cure any discrimination in the temporary 1975 plan.

(1) By Order of June 25, 1975 (App., Vol. II, pp. 178-80) issued prior to the promulgation of the 1975 court-ordered plan, the District Court indicated that it proposed to formulate "a temporary plan for the selection of Senators and Representatives for the 1975 election ONLY," that a permanent plan could not be formulated "because there is not enough time," (*id.*) and stated:

> "By entry of this order, the parties are judicially informed that this Court proposes without unnecessary delay to formulate a permanent plan for the election of legislators in the quadrennial elections of 1979. When that shall have been accomplished, special elections may be ordered in those

[26] *Id.* For the Senate plan, the remaining multi-member districts (number of senators in parentheses) were: Districts 1 (2), 4 (2), 6 (2), 11 (2), 12 (2), 15 (2), 19 (2), 24 (2), 25 (2), 30 (2), 32 (3), 33 (2). The remaining floterial districts were: Districts 27, 27A, and 27B (3).

legislative districts where required by law, equity, or the Constitution of the United States." App. Vol. II, p. 180.

(2) In its Order of July 8, 1975, the District Court held:

> "We have determined that no irreparable injury will occur by allowing the 1975 legislative elections to proceed under a temporary plan on the dates provided by law. If the permanent plan, later to be adopted manifests that the temporary plan has caused such an injury the same shall be corrected by special elections as provided by Mississippi law." Order of July 8, 1975 (App., Vol. II, p. 191).

(3) In response to plaintiffs' motion of July 21, 1975 to set a deadline for approval of a permanent legislative reapportionment plan and for special legislative elections, the District Court on August 1, 1975 stated its "firm determination" to have a permanent plan approved by February 1, 1976, and said:

> "As to all instances in which a special election may be required, the Court expects to direct that the same shall be held in conjunction with the 1976 Presidential election so far as to save the expense of special elections as far as possible." Order of August 1, 1975 (App., Vol. II, pp. 254-55).

Given these assurances, plaintiffs did not appeal from the District Court's temporary 1975 plan, despite their objections that the plan diluted black voting strength and was excessively malapportioned.[27] In the 1975 legislative elections—as a result of the creation of single-member House districts in Hinds County—three

[27] App., Vol. II, pp. 239-51.

additional black representatives were elected to the Mississippi House of Representatives. The 52-member Mississippi Senate remains all-white.

In its Order of July 11, 1975, the District Court also directed the parties within ninety days to file plans for the permanent reapportionment of the Mississippi Legislature (App., Vol. II, p. 237). These were to include plans providing for minimum practicable deviations from population norms without fracturing county boundaries, an alternative plan providing for minimum fracturing of county boundaries, and plans preferred by the parties which were consistent "with their view of the law" (*id.*). Pursuant to this order, proposed permanent plans were filed by the private plaintiffs and by the plaintiff-intervenor (App., Vol. III, pp. 1-77). Defendants submitted no new plans, proposing instead that the District Court permanently adopt its 1971 court-ordered plan as modified by the Mississippi Legislature in 1975, or alternatively, the District Court's temporary 1975 plan.[28]

Despite its assurances that a permanent court-ordered plan would be issued by February 1, 1976, the District Court on January 29, 1976 (App. Vol. III, pp. 79-80) stayed all further proceedings to await final decisions in three cases then pending in this Court.[29] On plaintiffs' petition for a writ of mandamus, joined by the United States, this Court granted the motion for leave to file the petition, indicated that there was "no

[28] *East Carroll Parish School Board* v. *Marshall*, 424 U.S. 636 (decided March 8, 1976); *Beer* v. *United States*, 425 U.S. 130 (decided March 30, 1976); and *United Jewish Organizations of Williamsburg* v. *Carey, cert. granted*, 423 U.S. 945 (1975) (No. 75-104).

[29] Defendants' Submission Pursuant to Order, filed Oct. 9, 1975.

justification on the ground stated for delaying further a final decision in this long-pending case," *Connor* v. *Coleman,* 425 U.S. 675, 677 (1976), and instructed the District Court

> "to 'bring this case to trial forthwith . . .' and schedule a hearing to be held within 30 days on all proposed permanent reapportionment plans to the end of entering a final judgment embodying a permanent plan reapportioning the Mississippi Legislature in accordance with law to be applicable to the election of legislators in the 1979 quadrennial elections, and also ordering any necessary special elections to be held to coincide with the November 1976 Presidential and congressional elections, or in any event at the earliest practicable date thereafter." *Id.* at 678.

A final hearing was held June 15, 1976.

C. The District Court's Permanent Plan.

On August 24 and September 8, 1976 the District Court promulgated court-ordered plans for the Mississippi Senate and House of Representatives, respectively, providing for both houses single-member districts statewide. 419 F. Supp. 1072, 1089 (App., Vol. III, pp. 94-138).

For its permanent plan, the District Court followed four basic criteria. First, following this Court's decisions in *Connor* v. *Williams, supra, Mahan* v. *Howell, supra,* and *Chapman* v. *Meier, supra,* the District Court established plans for both the Senate and House which provided single-member districts statewide. 419 F. Supp. at 1073, 1075, 1090. Second, noting that prior legislative districts had been delineated by county boundaries, and because of permanent voter registration, the

District Court determined to construct its legislative districts "primarily from counties, using beats [supervisors' districts] and precincts as necessary to approach or attain the required population norm." *Id.* at 1074. Any other plan, the District Court believed, would require a realignment of voting precincts and a reregistration of voters. *Id.* at 1075. Third, the District Court aimed at population variances which were "as near *de minimis* as possible," (*id.* at 1076), although it recognized that following county, supervisors' district, and precinct boundaries "has necessitated greater variances in population percentages in some instances than ordinarily would have been preferred" (*id.*). Fourth, the District Court determined:

> "There shall be no minimization or cancellation of black voting strength. Any apparent dilution in any particular locality will occur only when dictated by the necessity for drawing district lines so as to adhere as closely as possible to the population norm while maintaining contiguity and a reasonable degree of compactness." *Id.*

Although the District Court in its Opinion of June 15, 1976 stated: "The plan to be formulated by the Court will be based on the official returns of the 1970 Census" (App., Vol. III, p. 88), the court's districts were devised not on the basis of 1970 Census population statistics, but rather from the votes received by the Democratic candidates for Governor in the August 5, 1975 Democratic primary election.[30]

With the promulgation of its plan, the District Court ordered the parties to submit proposals for special leg-

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[30] 419 F. Supp. 1072, 1087; Analysis by Special Master of Plaintiffs' Objections, filed December 20, 1976 (App., Vol. III, pp. 261-62).

islative elections to be held prior to the regular 1979 legislative elections. 419 F. Supp. at 1082, 1114. Plaintiffs proposed that the District Court order special elections in 10 new Senate districts and 41 new House districts which included in the Senate and House all majority black districts created by the District Court's new plan, several Senate and House districts which were excessively malapportioned in the temporary 1975 plan, and in the House, districts which in the new plan have no incumbent representatives and districts which have two incumbent representatives residing in the same new districts. (App., Vol. III, pp. 139-41, 146-59). The Department of Justice proposed special elections in 8 new Senate districts and 29 new House districts, which included new black majority districts carved out of the old multi-member districts in which the percentage of blacks had increased, and single-member districts which previously were majority white and which under the new plan have black voting age population majorities (App., Vol. III, pp. 142-45, 169-73). Defendants resisted any special legislative elections.[31]

Plaintiffs also on September 20 and October 8, 1976 filed objections and motions to alter or amend the District Court's judgment (App., Vol. III, pp. 160-68, 182-96). Plaintiffs contended that the District Court's Senate plan, with a total deviation of 18.32% (later reduced to 16.5%) was excessively malapportioned, and in certain districts diluted black voting strength. As an alternative plan, plaintiffs proposed a modification of a county boundary plan presented to the Court in

[31] Defendants' Submission Pursuant to Order, filed Sept. 8, 1976; Defendants' Submission Pursuant to Order and Objections to Request for Special Elections, filed Sept. 23, 1976.

1975, termed the Modified Henderson County Boundary Plan (App., Vol. III, pp. 186-90), which adhered to the criteria preferred by the District Court (single-member districts based on counties, beats, and precincts), but which provided a total deviation of only 13.66% from population equality, fractured fewer county lines by splitting up only 15 counties (as opposed to 19 counties in the District Court's plan), and which cured the dilution of black voting strength pointed out in plaintiffs' objections.

Plaintiffs also objected to nine districts in the District Court's House plan, and provided alternative plans which provided smaller variances from population equality and which remedied plaintiffs' objections to dilution and fragmentation of black voting strength pointed out in plaintiffs' objections (*id.*, pp. 191-96).

The Department of Justice on October 22, 1976 filed objections of racial dilution to the Senate plan, proposing as an alternative either the Modified Henderson Plan or a modification of one of their own proposed plans, and objections to 34 House districts (and "comments" on 7 more), proposing either plaintiffs' alternatives or alternatives drafted by the Department (App., Vol. III, pp. 206-19).

On November 12, 1976 the District Court rendered an opinion (App., Vol. III, pp. 220-31) disposing of private plaintiffs' and plaintiff-intervenors' objections and proposals for special elections, and private plaintiffs' motion for attorney's fees.[32]

[32] Plaintiffs' Motion for an Award of Attorney's Fees, filed June 15, 1976, attached hereto as Appendix A, *infra*. The motion was based on the 1975 amendments to the Voting Rights Act of 1965, 42 U.S.C. § 1973*l*(e), 89 Stat. 404.

On plaintiffs' objections to the plan, the District Court revised 11 House districts "to improve upon discrepancies involving contiguity and population" (*id.* p. 221), although none of the alternatives suggested by the private plaintiffs or plaintiff-intervenor were accepted. The District Court failed to state any reasons for its rejection of the Modified Henderson Plan for the Senate, or for its rejections of plaintiffs' proposed alternatives for the House.

On special elections, the District Court held that the Mississippi Legislature's 1975 plan was not unconstitutional, and that the District Court's temporary 1975 plan "comported with all pertinent Constitutional standards" (*id.*, p. 223). The District Court then held plaintiffs to the constitutional standard announced by this Court in *White* v. *Regester,* 412 U.S. 755 (1973), of proving that plaintiffs had been denied equal access to the political process, and held that plaintiffs had not met that burden (*id.*, p. 225). The court then refused to order any special election relief in any "new districts with black population majorities [which] participated in the 1975 elections in districts which had black population majorities at that time" (*id.*, p. 228). Under the criteria enunciated by the court, five new House districts (Districts 3, 52, 79, 81, and 97) were held to qualify for consideration (*id.*, pp. 226-28). The Court then refused to order special elections in two (Districts 52 and 81), stating that this would require special elections in adjoining districts (*id.*, pp. 226-28), and in a third (District 3) because a black candidate lost to a white candidate in the 1975 elections (although voting was countywide in the 1975 district) (*id.*, p. 228). Special elections thus were ordered in only two new House districts (Districts 79 and 97), but the court

refrained "from setting dates for special legislative elections until time for an appeal has expired or until the Supreme Court shall have decided an appeal on the merits" (*id.*, p. 230).

On costs and attorneys' fees, the District Court taxed costs against the defendants, but refused to award plaintiffs their attorneys' fees:

> "The Court has heretofore found that the Mississippi Legislature made a good faith effort to reapportion itself in 1973 and 1975. The 1975 effort was upheld by this Court but failed on account of the disapproval of the Attorney General of the United States. We are thus of the opinion that no attorneys' fees are allowable in this case." *Id.*, p. 230.

The District Court on November 18, 1976 entered final judgment conforming to its prior opinions (App., Vol. III, pp. 232-48). Private plaintiffs on the same day filed a notice of appeal from paragraphs 7 and 8 of the final judgment concerning special elections (*id.*, p. 249), and on November 19, 1976 filed an application with this Court for special elections in 24 House districts and for postponement of the regular session of the Mississippi Legislature scheduled to commence January 4, 1977 (Application, *Connor* v. *Finch,* No. 76-777 (No. A-421)). On December 8, 1976, this Court noted probable jurisdiction of plaintiffs' appeal and expedited the appeal, but denied the other relief requested (*Connor* v. *Finch*, No. A-421, App., Vol. III, p. 259).

On November 29, 1976, private plaintiffs filed a timely motion to alter or amend the final judgment reiterating their prior objections to the District Court's Senate districts and certain House districts (*id.*, p. 250).

On December 21, 1976, after receipt of a special master's report discussing those objections (*id.*, p. 260),[33] the District Court entered an Order Amending Previous Judgment in which it revised two Senate districts (reducing the total deviation of the Senate plan to 16.5%) and nine House districts (*id.*, pp. 279-82).

Private plaintiffs then filed their notice of appeal from the entire final judgment, as amended, on December 27, 1976 (*id.*, p. 283), and on December 28, 1976 and December 30, 1976, notices of appeal were filed by the United States (*id.*, p. 283) and by the defendants (J.S., *Finch* v. *Connor,* No. 76-933, App. F, p. 81a).

ARGUMENT

SUMMARY OF ARGUMENT

1. Although Mississippi is 36.8 percent black and has a higher percentage of blacks than any other state. since 1900 only four black legislators have been elected to the 122-member Mississippi House of Representatives and no blacks have been elected to the 52-member Mississippi Senate. This systematic exclusion of blacks from the Mississippi Legislature is the result, first, of the deliberate disfranchisement of black citizens by state authorities up to the passage of the Voting Rights Act of 1965, and second, of the imposition by the District Court in this case of discriminatory multi-member districts and countywide voting for legislative office for the 1967, 1971, and 1975 state legislative elections. As a result, black citizens in Mississippi to date have been denied equal access to the political process in state legislative elections.

[33] No hearing was held on the Special Master's report.

2. Although the District Court by its last judgment promulgated a permanent plan which provides single-member districts statewide for both houses of the Mississippi Legislature, the District Court's plan does not fully meet constitutional requirements for court-ordered legislative reapportionment plans. The District Court's Senate plan is excessively malapportioned by a total deviation of 16.5%, and 11 Senate districts unnecessarily minimize and cancel out black voting strength. The District Court's House plan likewise contains 11 House districts which unnecessarily minimize and cancel out black voting strength. Plaintiffs presented to the District Court—which the court rejected without any hearing or stated reasons—alternative plans which would have remedied the malapportionment in the Senate plan by reducing the total deviation to 13.66%, and which would have cu ed the dilution of black voting strength present in both the Senate plan and the House districts.

3. Despite the fact that the District Court's temporary 1975 plan for legislative elections (a) failed to conform to this Court's mandate on *Connor* v. *Waller,* 421 U.S. 656 (1975), (b) was based on the Mississippi Legislature's 1975 plan to which the Attorney General objected under the Voting Rights Act for racial discrimination, and (c) provided for the election of a majority of both houses of the Mississippi Legislature, from discriminatory multi-member and floterial districts, the District Court refused to order more than two special elections in two House districts to cure the defects of its 1975 plan. The result is to deny black voters who resided in discriminatory countywide and multi-member districts in the 1971 and 1975 elections the opportunity to elect legislators of their choice for another four years, and to perpetuate in office an im-

properly constituted state legislature elected under a constitutionally defective reapportionment plan until the next quadrennial elections in 1979. To remedy the discrimination of the temporary 1975 plan, the District Court should be directed to order special legislative elections in all majority black Senate and House districts in its permanent plan (except for six House districts), to be held at the earliest practicable date.

4. The District Court erred in denying plaintiffs their reasonable attorney's fees on a finding that the Mississippi Legislature had made a good faith effort to reapportion itself, because (a) all the proof in this case contradicts that finding, and (b) the finding is irrelevant because an award of attorney's fees in this case is authorized by both the 1975 amendments to the Voting Rights Act of 1965, 42 U.S.C. § 1973*l*(e), and the Civil Rights Attorney's Fees Awards Act of 1976, P.L. 94-559, 90 Stat. 2641, under which prevailing parties "should ordinarily recover an attorney's fee unless special circumstances would render such an award unjust." *Newman* v. *Piggie Park Enterprises, Inc.*, 390 U.S. 400, 402 (1968).

I. MISSISSIPPI BLACKS HAVE BEEN DENIED EQUAL ACCESS TO THE POLITICAL PROCESS.

Mississippi is 36.8 percent black (1970 Census), yet from 1960 to 1975, only one black legislator was elected to the 122-member House of Representatives, and since 1900 no black has been elected to the 52-member Senate.[34] As a result of the creation of single-member districts for Hinds County in 1975, three additional black representatives, but no black senators, were

[34] Tr., May 7, 1975, p. 46.

elected.[35] Between 1900 and 1971, no black was nominated for the legislature in a party primary.[36]

This exclusion of blacks from the Mississippi Legislature reflects an historic pattern of deliberate exclusion of blacks from the effective exercise of their political rights secured by the Fourteenth and Fifteenth Amendments. Prior to the passage of the Voting Rights Act of 1965, eligible black citizens in Mississippi were almost completely disfranchised by the discriminatory constitutional interpretation and literacy tests for voter registration[37] and by the poll tax requirement[38] en-

[35] In contrast, other Southern and border states in which blacks make up a smaller percentage of the total population have many more black legislators:

State	% Black	Representatives No. Blacks/ Total Members	Senators No. Blacks/ Total Members
Georgia	25.9%	20/180	2/56
Maryland	17.8%	14/141	5/47
Alabama	26.2%	13/105	2/35
South Carolina	30.5%	13/124	0/46
Tennessee	15.8%	9/99	2/33
Louisiana	29.8%	9/105	1/39
Texas	12.5%	9/150	0/31

Joint Center for Political Studies, NATIONAL ROSTER OF BLACK ELECTED OFFICIALS, Vol. 6, p. xi (August 1976).

[36] Tr., May 7, 1975, p. 46.

[37] Miss. Const., art. 12, § 244 (1890); Miss. Code Ann. § 3213 (1956 Recomp.); Miss. Code Ann. § 23-5-85 (1972), suspended by operation of § 4 of the Voting Rights Act of 1965, 42 U.S.C. § 1973b. *See United States* v. *Mississippi*, 380 U.S. 128 (1965), *on remand*, 256 F. Supp. 344 (S.D. Miss. 1966); United States Commission on Civil Rights, VOTING IN MISSISSIPPI 4-6, 8-11, 13-18 (1965).

Prior to the Enactment of the Voting Rights Act, only 28,500 blacks, or 6.7% of those eligible, were registered to vote in Mississippi, as compared with 69.9% of the eligible whites. United States Commission on Civil Rights, POLITICAL PARTICIPATION 13 (1968).

[38] Miss. Const., art. 12, §§ 241, 243; Miss. Code Ann. §§ 3160, 3235 (1956 Recomp.), held unconstitutional in *United States* v.

acted in the Mississippi Constitutional Convention of 1890.[39] In addition, blacks were excluded from party affairs by the adoption in 1903 of the "white primary" rule by the State Democratic Executive Committee.[40] After the "white primary" was struck down, blacks were excluded from participation in party affairs by the party principles loyalty law[41] and the successive adoption by the Mississippi Democratic and Republican parties until 1972 of principles espousing segregation of the races.[42]

After the passage of the Voting Rights Act allowing Mississippi blacks to register and vote, the United States Attorney General was forced to dispatch Federal registrars (examiners) to 34 Mississippi counties —more than in any other southern state[43]—to enforce the guarantees of the Fifteenth Amendment.[44] In addition, Federal observers have been required to observe municipal, county, and state elections in most of these counties to protect Fifteenth Amendment rights and to insure that the votes of black voters are counted and included in the election returns.[45]

From 1890 to the present day, blacks in Mississippi have been effectively prevented from electing legislators of their choice. Fearing that its discriminatory franchise restrictions might be struck down by the Federal courts, the Mississippi Constitutional Convention of 1890 deliberately gerrymandered the state's legislative districts by subdividing counties with heavy black concentrations to carve out white majority single-member and two-member districts,[46] by increasing the number of representatives and allotting the increase to the white counties,[47] and by establishing three constitutional apportionment divisions which minimized represen-

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Mississippi, 11 Race Rel. L. Rep. 837 (S.D. Miss. 1966). See *Ratliff* v. *Beale*, 74 Miss. 247, 268, 20 So. 865, 869 (1896); VOTING IN MISSISSIPPI, *supra* n. 37, at 3-4, 18-19.

[39] For accounts of the black disenfranchisement in the convention, see VOTING IN MISSISSIPPI, *supra* n.37 at 3-6; A. D. Kirwan, REVOLT OF THE REDNECKS, ch. 7 (1965).

[40] VOTING IN MISSISSIPPI, *supra* n.37, at 6-8; Kirwan, *supra*, n.39, at 129-31; *see* Weeks, *The White Primary*, 8 Miss. L.J. 135 (1935).

[41] Miss. Code Ann. § 3129 (1956 Recomp.), which conditioned participation in party primaries on adherence to the principles of the political party adopted at the last state convention.

[42] VOTING IN MISSISSIPPI, *supra* n.37, at 7-8; POLITICAL PARTICIPATION, *supra* n.37, at 145-46. In addition, the predominantly white regular Mississippi delegations to the 1968 and 1972 Democratic National Conventions were denied their seats for exclusion of blacks and failure to follow party rules governing participation in precinct caucuses and county conventions to select delegates. See *Riddell* v. *National Democratic Party*, 508 F.2d 770 (5th Cir. 1975). State officials also unconstitutionally denied state recognition to the integrated Democratic Party faction recognized by the National Democratic Party. *Id.*

[43] *Hearings on Extension of the Voting Rights Act of 1965 Before the Subcommittee on Constitutional Rights of the Senate Comm. on the Judiciary*, 94th Cong., 1st Sess. 631-32 (1975).

[44] Tr. May 7, 1975, Ex. P-9 (deposition of J. Stanley Pottinger, Assistant Attorney General for civil rights, U.S. Department of Justice) (App., Vol. I, pp. 200-20).

[45] *Id.*

[46] Kirwan, *Apportionment in the Mississippi Constitution of 1890*, 14 J. Southern Hist. 234 (1948). The text of these constitutional provisions, and subsequent statutes subdividing counties in the House, are attached in Appendix B, *infra*.

[47] *Id.*; A. Kirwan, Revolt of the Rednecks, *supra*, at 79.

tation from black counties.[48] Just as the black registration and voting began to increase as a result of the passage of the Voting Rights Act, the District Court in this case in 1967, 1971, and 1975 perpetuated the exclusion of blacks from legislative office by adopting plans which provided for at-large voting in numerous multi-member districts, which combined majority black counties with more populous majority white counties for districtwide white majorities, and which required at-large countywide voting in counties with substantial black concentrations.[49] Racial dilution in these multi-member districts was enhanced by Miss. Code Ann. § 23-3-69 (1972) which requires a majority vote to win party primary elections, by Miss. Code Ann. § 3110 (1956 Recomp.) which prohibits single-shot voting for legislative candidates, and by the successive adoption by the District Court in its court-ordered plans of the "post" requirement limiting candidates for legislative office to a specified post on the ballot.[50]

Further, there is in Mississippi a pattern of bloc voting by race.[51] Whites will not vote for black candidates

[48] *Id.*; Leon A. Wilber, *Reapportionment of the Mississippi Legislature* 1-2 (1961).

[49] *Connor* v. *Johnson*, 265 F. Supp. 492 (S.D. Miss. 1967); *Connor* v. *Johnson*, 330 F. Supp. 506 (S.D. Miss. 1971), *vacated and remanded sub nom. Connor* v. *Williams*, 404 U.S. 549 (1972). For a detailed description of the racial dilution effected by those plans, see J.S., *Connor* v. *Waller*, 421 U.S. 656 (1975), pp. 8-14; Plaintiffs' Motion to Alter or Amend Judgment, filed July 21, 1975 (App., Vol. II, pp. 239-51).

[50] 265 F. Supp. at 496, 498; 330 F. Supp. at 509.

[51] Hearing of May 7, 1975, Exs. P-7, P-8, and P-10, depositions of Dr. James W. Loewen (App., Vol. I, pp. 117-31), Dr. Gordon G. Henderson (*id.*, pp. 172-85), and Rims Barber (*id.*, pp. 221-80).

(*Footnote continued next page*)

or candidates identified with black interests.[52] Thus, in white majority districts, blacks and their allies cannot be nominated or elected, and coalitions between whites and blacks for the election of black candidates or candidates identified with black interests is effectively precluded.[53]

As a result of the systematic exclusion of blacks from legislative office, the Mississippi Legislature has continually demonstrated its unresponsiveness to the needs and interests of the black electorate.[54] Indeed, the state legislature has passed numerous statutes designed to prevent the election of black candidates to public office, including requiring at-large rather than ward elections for city officials, from beat to at-large election of county supervisors; increasing the qualifying requirements for independent candidates (most of whom since 1965 have been black); switching from election to appointment of county officials; making voter registration more difficult by requiring burdensome and harassing questions; and (three times) enacting the "open primary" law which abolishes party primaries and requires a majority vote to win the general election.[55] All

For example, in the 1971 general election, the correlation between black population of counties and the votes for Charles Evers, black candidate for Governor, was .93 (*id.*, p. 128), on a scale of —1.0 to +1.0 on which a correlation of .5 would be statistically significant (*id.*, pp. 122-23. *See also*, Loewen, *Cultural Geography and the Study of Mississippi History and Social Structure*, 2 The Mississippi Geographer 27 (Spring 1974).

[52] *Id.*

[53] App., Vol. I, pp. 131, 184.

[54] Tr., May 7, 1975, pp. 63-68, Ex. P-16.

[55] These statutes are collected in Appendix C, attached.

of these discriminatory election law changes, except for the 1972 voter registration form, have either been struck down by the courts as racially discriminatory or objected to by the United States Attorney General under Section 5 of the Voting Rights Act of 1965, as racially discriminatory in purpose and/or effect.[56]

In addition, blacks in Mississippi continue to suffer from the results of invidious discrimination in education,[57] employment,[58] housing, and other socio-economic conditions. Blacks in Mississippi have lower educational attainment, more unemployment, more dilapidated housing, and are disproportionately placed in blue collar, lower paying jobs.[59]

Due to past discrimination in voter registration and

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[56] Hearing of May 7, 1975, Ex. P-9, Pottinger dep. (App., Vol. I, pp. 200-20); Appendix C, attached.

[57] Most of Mississippi's school districts have been found to have operated dual, racially segregated systems, which required years of litigation to overcome. *See*, e.g., *Alexander* v. *Holmes County Bd. of Educ.*, 396 U.S. 19 (1969); *United States* v. *Hinds County School Bd.*, 423 F.2d 1264 (5th Cir. 1969) (30 districts).

[58] Two Mississippi state agencies have been found guilty of racial discrimination in employment practices, *Wade* v. *Miss. Cooperative Extension Service*, 372 F. Supp. 126 (N.D. Miss. 1974), *aff'd in part, vac'd in part*, 528 F.2d 508 (5th Cir. 1976); *Morrow* v. *Crisler*, 491 F.2d 1053 (5th Cir. 1974) (Mississippi Highway Patrol). Other employment discrimination suits against state agencies are pending.

[59] Mississippi Office of Human Resources and Community Services, *The Extent and Distribution of Poverty in Mississippi* (June, 1976). Based on the 1970 Census and other, more recent data, the statistics in this study may be summarized on the following table:

(*Footnote continued next page*)

depressed socio-economic conditions,[60] disproportionately fewer eligible blacks than whites are registered to vote (66% of the eligible blacks as compared with 76% of the eligible whites)[61] or turn out at the polls on election day to cast ballots.[62]

As a result of these factors showing that Mississippi blacks have had "less opportunity than did other residents . . . to participate in the political processes and to elect legislators of their choice," *White* v. *Regester*, 412 U.S. 755, 766 (1973), the District Court was under a special burden to establish in its permanent plan districts which did not dilute black voting strength and which secured "full and effective participation by all

	White	Nonwhite
Persons below poverty level	17.9%	64.9%
Families with incomes below poverty level	16%	59.4%
Median family income	$8,420	$3,424
Median education, males 25 and over	12.1 yrs.	6.5 yrs.
Percent high school graduates	52.6%	14.9%
Infant mortality rate	17.0	35.6
Percent of family heads not in labor force	19.9%	33.4%
White collar,		
Males	38.5%	9.2%
Females	57.5%	22.0%
Blue Collar	56%	79%

[60] *See also*, Salamon & Van Evera, *Fear, Apathy, and Discrimination: A Test of Three Explanations of Political Participation*, 67 Am. Pol. Sci. Rev. 1288 (Dec. 1973), contending that fear still keeps Mississippi blacks from registering and voting.

[61] Mississippi Institute of Politics, *Voter Registration in Mississippi*, p. 2 (March, 1971) (Hearing of May 7, 1975, Ex. P-10, Barber dep., Dep. Ex. 2).

[62] Tr., May 7, 1975 (App., Vol. II, pp. 81-113).

citizens in state government," *Reynolds* v. *Sims*, 377 U.S. 533, 565 (1964), and to order a sufficient number of special elections to cure past discrimination.

Although the District Court erroneously denied the existence of these factors (Opinion of November 12, 1976, App., Vol. III, pp. 223-26), it did recognize that it had an obligation to establish districts in which "population variances are . . . as near *de minimis* as possible" (419 F. Supp. at 1076), and in which there is "no minimization or cancellation of black voting strength" (*id.*). However, in fashioning its Senate plan and in certain districts in its House plan, the District Court failed to conform to its own criteria.

II. THE DISTRICT COURT'S FINAL PLAN IS UNCONSTITUTIONALLY MALAPPORTIONED AND UNCONSTITUTIONALLY DILUTES BLACK VOTING STRENGTH IN CERTAIN DISTRICTS.

A. The District Court's Senate Plan Is Excessively Malapportioned and Unnecessarily Dilutes Black Voting Strength in Certain Districts.

Instead of starting on a fresh slate, the District Court in devising its single-member Senate plan in general simply subdivided the old multi-member districts in its 1971 plan.[63] As a result, the District Court began its efforts with districts containing excessively high variances from population equality (total deviation of 18.90%, excluding floterial districts) and which in many instances diluted black voting strength by combining majority black counties and majority white counties in districtwide white majorities.

According to the District Court's own figures, the District Court's Senate plan has a total deviation from

[63] Compare 330 F. Supp. at 509-12 *with* 419 F. Supp. at 1077-82.

population equality of 16.5%, with the largest variances occurring in District 6 (+ 8.2%) (419 F. Supp. at 1078) and in District 38 (— 8.3%) (*id.* at 1080.) Fifteen of the court's 52 Senate districts have variances from population equality of over 5%, plus or minus, and four have variances of 8% or over, plus or minus (419 F. Supp. at 1077-82).

In contrast, plaintiffs' Modified Henderson County Boundary Plan—also based exclusively on political subdivision boundaries—has a total deviation of only 13.66%, with the largest variances occurring in District 4 (+ 6.46%) and in District 45 (— 7.20%) (App., Vol. III, pp. 186-90).[64] Only 9 of the 52 districts have variances exceeding 5%, plus or minus, and none have variances exceeding 7.20% (*id.*).

Further, several of the District Court's Senate districts dilute and fragment black voting strength:

(1) In District 37 (419 F. Supp. at 1080) Claiborne County, which is 74% black[65] and has numerous countywide black elected officials, is combined with Beat 3 of Copiah County and with Lincoln County, which is 69% white, to create a single-member district which is 55.02% white (App., Vol. III, pp. 162-63, 207).

[64] A copy of the plan also is attached to J.S., *Connor* v. *Finch*, No. 76-935, App. pp. 19a-23a. This plan is merely a modification of the plan presented by Dr. Gordon G. Henderson derived from a computer study showing the lowest variances which could be achieved by combining whole counties. The Henderson plan was modified to subdivide all multi-member districts into single-member districts. See p. 13, n.19, *supra*.

[65] Population statistics are based on 1970 Census data. For political subdivisions altered since the 1970 Census, or for which 1970 Census data is not published, population statistics are estimates based on Census enumeration districts.

(2) In Districts 1 and 2 (419 F. Supp. at 1077), Marshall County, which is 61.98% black is split up and fragmented between more populous Desoto County, which is 64.75% white, and Lafayette County, which is 71.60% white, to create two white majority single-member districts (*id.*, pp. 163, 107).

(3) In District 11 (419 F. Supp. at 1078), Panola County, which is 51.26% black, is combined with majority white Yalobusha County (59.34% white) and Beat 3 of majority white Calhoun County to form a white majority district (*id.*).

(4) In District 22 (419 F. Supp. at 1079), majority black Noxubee County (65.77% black) is combined with more populous majority white Oktibbeha County (65.58% white) to create a white majority single-member district (*id.*).

(5) In District 39 (419 F. Supp. at 1080), majority black Wilkinson County (67.56% black) and Amite County (50.44% black) are combined with majority white Franklin County (61.13% white) and Beat 3 of Adams County (57.7% white) to form a single-member district, which although slightly majority black in population (51.3% black) is 56% white in voting age population (*id.*).[66]

(6) In Districts 31 through 35 (419 F. Supp. at 1080), the District Court employed as Senate districts

[66] Voting age population statistics, unless otherwise indicated, are based on the Mississippi State University study, E. Bryant and S. El-Attar, POPULATION OF MISSISSIPPI LEGISLATIVE AND CONGRESSIONAL DISTRICTS, 1970, AND PROJECTIONS TO 1975 (July, 1973) (Hearing of May 7, 1975, Ex. P-13). This voting age population study takes into account mortality and out-migration since 1970, and provides the most accurate and recent data available on voting age population for legislative districts.

the supervisors' districts of Hinds County, currently under challenge by black voters for racial dilution.[67] Prior to redistricting, Hinds County blacks had population and voting majorities in two supervisors' districts.[68] In 1969, the Hinds County Board of Supervisors enacted a redistricting plan which eliminated these two black beats and created white population and voting majorities in all five districts.[69] This plan subsequently was objected to by the United States Attorney General, for racial discrimination,[70] and invalidated by the District Court for unconstitutional malapportionment.[71] In 1973, the Board submitted, and the District Court approved, an "apple pie" plan based on the 1969 plan,[72] and the District Court in this case adopted this plan—still in litigation—for its Senate districts.

Census data show that the majority of black persons in Hinds County (69% of the total black population)

[67] *Kirksey* v. *Board of Supervisors of Hinds County*, 402 F. Supp. 658 (S.D. Miss. 1975), *aff'd*, 528 F.2d 536 (5th Cir. 1976), pending on rehearing *en banc*. Although the District Court sustained the constitutionality of the county redistricting, and a panel of the Fifth Circuit affirmed, the case is pending decision by the Fifth Circuit after oral argument on rehearing *en banc*. The record in the *Kirksey* case was incorporated into the record in this case.

[68] *Kirksey* Exs. P-37, P-38, plaintiffs' request for admissions and defendants' answers. District 2 was 76.26% black, and District 3 was 67.92% black. Also, *Kirksey* Ex. P-11, election returns for special congressional election in which black candidate Charles Evers received 65% of the vote in District 2 and almost half of the vote in District 3.

[69] *Kirksey* Ex. P-30.

[70] *Kirksey* Ex. P-20 (Pottinger dep.), Dep. Ex. E.

[71] *Kirksey* App. 28-31.

[72] *Kirksey* App. 37, the Board's plan.

reside in 48 contiguous, majority black Census enumeration districts in the central city of Jackson, the state capital.[73] All five districts in this county redistricting plan slice into this heavy black concentration, fragment it, and disperse portions of it among all five districts.[74] The districts are extremely distorted in shape—District 3 resembles a turkey, and District 4 a baby elephant.[75] Although two of the districts have slight black population majorities, all five districts are majority white in voting age population.[76] Because of racial bloc voting and the unwillingness of white voters to vote for black candidates or candidates allied with black interests,[77] Hinds County blacks—who constitute 39% of the total county population—are deprived of the opportunity to elect officials of their choice in any of the five districts.[78] See also, App., Vol. III, pp. 162, 163-64, 207-08.

Although the District Court's plan altogether provides 14 Senate districts which are majority black in

[73] *Kirksey* Exs. P-37, P-38. This area, shaped like a boot, is 92% black. *Id.*

[74] *Kirksey* Ex. P-44, map.

[75] These were the terms used by the District Court, 402 F. Supp. at 666. Instead of using natural boundaries or geographic landmarks to delineate district boundaries, the plan uses invisible land section lines in most of the county area outside Jackson. *Kirksey* App. 50, Figure 1.

[76] Blacks in District 2 constitute 53.4% of the total population, but only 48.0% of the voting age population (VAP) (1970 Census); blacks in District 5 constitute 54.0% of the total population, but only 48.6% of the VAP (1970 Census). The other three districts are 70.5%, 72.3%, and 68.0% white. *Kirksey* Exs. P-30, P-54; *Kirksey* App. 278-97, 379-92.

[77] *Kirksey* App. 322-26, 350-78.

[78] *Id.*, 325-26, 393.

population, only six districts are majority black in voting age population (*id.*, p. 164).

The Modified Henderson Plan avoids dilution of black voting strength in these districts.

(1) Claiborne County, instead of being combined with Copiah County, Beat 3, and Lincoln in a majority white district, instead is combined with Jefferson and Copiah in a district which does not fragment any county, which is 61.1% black, and which has a variance of only +3.51% (*id.*, p. 189).

(2) Marshall County, instead of being fragmented between two majority white districts, is combined with Tate in a district which is 55.6% black (*id.*, p. 186).

(3) Panola County, instead of being combined with Yalobusha and Calhoun, Beat 3, is instead combined with Quitman County in a district which does not fragment any county and is 53.5% black (*id.*).

(4) Noxubee County, instead of being combined with Oktibbeha, is instead combined with Winston and Lowndes County, Beat 4, in a district which is 54.5% black (*id.*, p. 187).

(5) Wilkinson and Amite Counties, instead of being combined with Franklin and Adams County, Beat 3, are instead combined with Pike County, Beats 1, 2, and 5, in a district which has a greater black majority (52.6% black) than under the District Court's own plan (*id.*, p. 138).

For Hinds County, plaintiffs presented their Census Trace Plan[79] based exclusively on 1970 Census tracts,

[79] Hearing of May 7, 1975, Ex. P-14.

which then conformed in the City of Jackson to voting precincts.[80] This plan provides five single-member Senate districts for Hinds County which do not fragment and disperse the heavy black concentration in central Jackson, and which includes two majority black districts which are 66.47% and 68.36% black in population.[81]

The Modified Henderson Plan, taken with the Hinds County Census Tract Plan, results in 15 majority black Senate districts (as compared with 14 in the District Court's plan); eight of those districts (as compared with only six in the District Court's plan) are majority black in voting age population.

Although the Modified Henderson Plan, and the Census Tract Plan for Hinds County, adhere more closely to the criteria established by the District Court than the District Court's own plan, are based on 1970 Census data, provide greater equality of population among the districts, contain less dilution of black voting strength, and cross fewer county lines, the District Court rejected these proposed alternatives without stating any reason or justification.

B. The District Court's House Plan Unnecessarily Dilutes Black Voting Strength in Certain Districts.

Plaintiffs did not object to the entire House plan, as they did the Senate plan, but only to certain districts in the House plan for fragmentation and dilution of black voting strength and excessive malapportionment. In its entirety the District Court's House plan—by providing

[80] *Kirksey* App. 235. These precincts have since been altered to accommodate the 1973 Hinds County redistricting plan.

[81] Hearing of May 7, 1975, Ex. P-14.

approximately 30 House districts which are majority black in population—goes a long way toward alleviating the dilution of black voting strength present in the 1971 and 1975 court-ordered plans. However, certain districts do not comply with the District Court's criteria of avoiding dilution of black voting strength and minimizing population variances.

(1) Washington and Issaquena Counties (House Districts 32, 33, 34, and 35). Washington County is 54% black and has 38,460 black people, the second largest black population of any county in the state.[82] According to 1970 Census data, the greatest proportion of the black population of Washington County is situated in north and west Greenville, the county seat.[83] The District Court's plan fragments this heavy black population concentration among four House districts.[84] District 35 is majority white; Districts 32, 33, and 34 are majority black in population, but less than 53% black in voting age population.[85] Given that throughout the

[82] U.S. Bureau of the Census, 1970 CENSUS OF POPULATION, GENERAL POPULATION CHARACTERISTICS: MISSISSIPPI, PC(1)-B26, Table 34, p. 26-86 (1971).

[83] Data on Census enumeration districts, by race, for each county in the state is stipulated, Hearing of May 7, 1975, Ex. P-1; Hearing of Feb. 7, 1975, Exs. P-1, P-2. Maps showing the boundaries of these enumeration districts were admitted in evidence as part of Exs. P-19 through P-22, Hearing of May 7, 1975.

[84] 419 F. Supp. at 1096-97. Based on estimates from 1970 Census data, the majority black precincts in Washington County are: Extension Building and Glen Allan (placed in District 32), Community Center, Arcola, and Hollandale (placed in District 33), Brent Center, Police Station, and New County Garage (placed in District 34), and Darlove, Bourbon, Industrial College, Leland Health Clinic, and Leland Light Plant (placed in District 35).

[85] Objections of the United States, filed Oct. 22, 1976 (App., Vol. III, p. 209).

state black registration is disproportionately lower than white registration, it is unlikely that black voters in Washington County can elect legislators of their choice in any of the five districts.

These districts also are malapportioned. Although the District Court's statistics, calculated from the election returns for the 1975 Democratic primary for Governor, indicate maximum variances of —4.2% for District 33 and +7.2% for District 34 (419 F. Supp. at 1096-97), plaintiffs' calculations based on 1970 Census enumeration districts indicate that the true population variances are —7.2% for District 33 and +11.0% for District 34, for a total deviation of 18.2% for these four districts.[86]

Plaintiffs presented to the District Court two alternative plans based on voting precincts—the population of which was calculated from 1970 Census enumeration districts—which would have avoided fractionating the heavy black population concentration in north and west Greenville, which would have provided districts in which black voters would have had an opportunity to elect legislators of their choice, and which would have reduced the excessive malapportionment to total deviations of 10.97% (Alternative 1) and 5.92% (Alternative 2).[87]

(2) Warren and Yazoo Counties (House Districts 47, 53, 54, 55, and 56). Warren County, which is 41%

[86] Plaintiffs' Motion to Alter or Amend Judgment, filed Nov. 29, 1976 (App., Vol. III, p. 253).

[87] Plaintiffs Supplement to Motion to Alter or Amend Judgment, filed Oct. 8, 1976 (App., Vol. III, pp. 193-94). Under Alternative 1, one district is majority white, and three districts are 55.13% black, 62.31%, and 65.93% black. Under Alternative 2, one district is majority white and three districts are 65.16% black, 66.48% black, and 63.04% black. *Id.*

black, contains 18,355 black people,[88] more than the 18,171 population required for a single-member House district. According to the 1970 Census, blacks in Warren County are most heavily concentrated in the City of Vicksburg, which contains 12,568 black persons, or 68.47% of the total black population of Warren County, and in the area just to the north of Vicksburg.[89] The three Warren County districts in the District Court's plan (Districts 53, 54, and 55) all slice into the heavy black population concentration in Vicksburg and north of Vicksburg and fragment it among all three districts.[90] According to the District Court's own figures, all three districts are majority white—District 53 is 57.5% white, District 54 is 58.2% white, and District 55 is 56.3% white[91]—thus depriving Warren County blacks of a majority in any of the Warren County districts.

Plaintiffs presented to the District Court an alternative plan (App., Vol. III, p. 196) based exclusively on voting precincts which, although providing slightly higher population variances, nevertheless does not fragment black voting strength in Warren County, and provides one district which is 59% black (*id.*).

(3) Adams County (House Districts 88 and 89). Adams County is 47.90% black and contains 17,865

[88] U.S. Bureau of the Census, 1970 CENSUS OF POPULATION, GENERAL POPULATION CHARACTERISTICS: MISSISSIPPI, PC(1)-B26, Table 34, p. 26-86 (1971).

[89] *Id.*, Table 27, p. 26-62.

[90] Order Amending Previous Judgment, filed Dec. 21, 1976 (App., Vol. III, pp. 281-82).

[91] *Id.*

black persons,[92] almost enough for an 18,171-person single-member district. According to the 1970 Census data, blacks are most heavily concentrated in the 11 majority black Census enumeration districts in north Natchez, the county seat, and in the northern part of Adams County.[93] The two Adams County districts in the District Court's plan split this heavy black population concentration so that one district (District 88) is 57.2% white, and the second district (District 89) has a black voting age population majority of only 50.7%.[94]

The Department of Justice presented to the District Court an alternative plan for Adams County which reduced the fractionalization and dilution of black voting strength and resulted in one district which had a black voting age population majority of 59.5% while maintaining a total deviation of less than 8%.[95]

As with plaintiffs' objections to the District Court's Senate plan, the District Court failed to hold a hearing on the objections of plaintiffs and plaintiff-intervenor to the court-ordered single-member House districts and failed to articulate any reasons why these

[92] U.S. Bureau of the Census, 1970 CENSUS OF POPULATION, GENERAL POPULATION CHARACTERISTICS: MISSISSIPPI, PC(1)-B26, Table 34, p. 26-84 (1971).

[93] Hearing of May 7, 1975, Exs. P-1, P-19 through P-22.

[94] Objections of the United States, filed Oct. 22, 1976 (App. Vol. III, pp. 210-11).

[95] *Id.* Plaintiffs also submitted an alternative plan which would have provided one black majority district. Plaintiffs' Supplemental Submission of Permanent Legislative Reapportionment Plans, filed Feb. 9, 1976, Exhibit 1 (Dist. 27).

proposed alternatives should not be accepted.[96] Because these proposed alternatives—like the District Court's districts—were based on county boundaries, supervisors' districts, and voting precincts, all of the proposed alternatives could have been accepted by the District Court without changing or affecting the boundaries of any other district.

C. Court-Ordered Legislative Reapportionment Plans Must Achieve the Greatest Practicable Equality of Population Among the Districts.

Although this Court has developed a more flexible standard for judging the constitutionality of legislative reapportionment plans promulgated by state legislatures, e.g., *Gaffney* v. *Cummings*, 412 U.S. 735 (1973); *White* v. *Regester*, 412 U.S. 755 (1973), the Court in this case and subsequent cases—in the exercise of its supervisory authority over District Courts—has developed a more rigid standard for judging the constitutionality of court-ordered plans. Thus, in *Chapman* v. *Meier*, 420 U.S. 1 (1975), this Court held: "A court-ordered plan . . . must be held to higher standards than a State's own plan" (*id.* at 26). In articulating the equal population standard to be applied to court-ordered plans, this Court stated:

> "With a court plan, any deviation from approximate population equality must be supported by enunciation of historically significant state policy or unique features * * * [A] court-ordered reapportionment plan of a state legislature . . . must ordinarily achieve the goal of population equality with little more than de minimis variation. Where

[96] Although the special master, in his report filed Dec. 20, 1976, contested plaintiffs' contentions (App., Vol. III, pp. 261-78), no hearing was ever held on plaintiffs' objections.

> important and significant state considerations rationally mandate departure from these standards, it is the reapportioning court's responsibility to articulate precisely why a plan of single-member districts with minimal population variance cannot be adopted." *Id.* at 26-27 (footnote omitted).

In *Chapman, supra,* this Court reversed a District Court decision adopting a court-ordered plan with a total deviation from population equality of 20.14% (*id.* at 21) over a plan prepared by a special master with a total deviation of only 5.95%, without providing any rationale for its rejection of the special master's (Ostenson) plan (*id.* at 26). The Court held that the excessively high deviation could not be justified by the absence of any claimed racial discrimination, by the sparse population of the state, nor by the division of the state by the Missouri River or the purported policy of maintaining political subdivision boundaries, since

> "a plan devised by Special Master Ostenson demonstrates that neither the Missouri River nor the policy of maintaining township lines prevents attaining a significantly lower population variance." *Id.* at 25 (footnote omitted).

The only justification presented by the District Court here for its own excessively high variances is the purported state policy of maintaining political subdivision boundaries (419 F. Supp. at 1074-76). "This," the District Court stated, "has necessitated greater variances in population percentages in some instances than ordinarily would have been preferred" (*id.* at 1076).

But this justification wholly fails to sustain the constitutionality of the District Court's plan. First, the

state policy characterized by the District Court is not nearly as rigid as the District Court states. Unlike other states, Mississippi has no express constitutional or statutory prohibition against breaking county lines for legislative reapportionment.[97] Nor has this been the unyielding practice. From 1890 to 1962 by constitutional provision or state statute at least 7 counties were subdivided for the election of at least 17 memmembers to the Mississippi House of Representatives.[98] Further, in legislatively enacted plans, and subsequently in District Court ordered plans, county lines have been violated in the formation of multi-county single-member, multi-member, and floterial districts which crossed county lines to combine two or more counties in a single district.[99] State officials themselves have stated that county lines should yield when necessary to secure effective and equal representation. On May 7, 1975, Governor William L. Waller, then a defendant in this case, stated that single-

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[97] In fact, Mississippi law expressly provides for representation in the legislature of "a city" or "part of a county." Miss. Code Ann. § 23-5-175 (1972) provides:

> "When a city or part of a county is entitled to separate representation in the legislature, the commissioners of election shall prepare for the election, and shall receive and canvass the returns, declare the result, and transmit it to the secretary of state, and act in all respects as in other elections."

[98] See Miss. Const. 1890, art. 13, § 254, ¶¶ 12, 13, 14, 15; Miss. Code Ann. § 3326 (1956 Recomp.). These constitutional provisions and state statutes subdividing counties for legislative representation are set out in Appendix B, *infra.*

[99] In addition, Mississippi has numerous school and other special purpose districts, such as county line school districts, consolidated school districts, and levee districts, which cross county lines and subdivide county areas. Hearing of May 7, 1975, Ex. P-10 (Barber dep.), pp. 83-90, Dep. Exs. 7, 8 (App., Vol. I, pp. 264-67).

member districts were inevitable and preferable even "if it takes a smaller geographical district that does cross county lines, then I'm personally in favor of the smaller geographic unit."[100]

But even granting that for practical reasons, political subdivision boundaries should be maintained, plaintiffs' Modified Henderson Plan provides single-member districts with a total deviation of only 13.66%, is based exclusively—like the District Court's own plan—on county boundaries, supervisors' districts, and voting precincts, and splits up only 15 counties. Thus, while the District Court articulated its rationale for preferring legislative districts defined by existing political boundaries rather than Census enumeration districts (419 F. Supp. at 1076), it failed entirely to justify its preference for its own Senate plan over plaintiffs' Modified Henderson Plan which complies with the same criteria as the court's plan, yet provides smaller population variances, breaks fewer county lines, is based on 1970 Census data, and eliminates the dilution of black voting strength contained in several of the District Court's Senate districts.

Because the District Court failed to adopt the Senate plan which provided the minimum population variance while still maintaining political subdivision boundaries, the District Court's Senate plan fails even to meet the standards established by this Court for evaluating malapportionment in plans formulated by state legislatures. Since the court plan has a total deviation of 16.5%, the plan is prima facie unconsti-

[100] The transcript of this statement was included in J.S., *Connor* v. *Waller*, *supra*, App. G, and added to the record in this case, Opinion of May 20, 1975, p. 66.

tutional, and the burden of justifying this excessive malapportionment was on the District Court. *Chapman* v. *Meier*, 420 U.S. 1, 24 (1975). But the District Court totally failed to articulate any rationale for preferring its Senate plan.

In *Kilgarlin* v. *Hill*, 386 U.S. 120 (1967), and *Swann* v. *Adams*, 385 U.S. 440 (1967), this Court reversed District Court judgments upholding the constitutionality of legislatively-enacted reapportionment plan providing total deviations of 26.48% and 25.65%. In *Kilgarlin*, the District Court justified the high deviation as "a bona fide attempt to conform to the state policy requiring legislative apportionment plans to respect county boundaries wherever possible" (386 U.S. at 122), but this Court in reversing held that the announced policy did not necessitate the high range of deviations, in part because "at least two other plans [were] presented to the court, which respected county lines but which produced substantially smaller deviations" (*id.* at 122). Similarly, in *Swann* the Court in reversing the District Court noted that "[t]he appellants themselves placed before the court their own plan which revealed much smaller variations between the districts than did the plan approved by the District Court" (385 U.S. at 445), and held that the plan could not be approved where there was no showing "that the difference [between the court-approved plan and equality of population] . . . is unavoidable or justified upon any legally acceptable grounds" (*id.* at 446).

D. Court-Ordered Legislative Reapportionment Plans Should Avoid Any Unnecessary Fragmentation or Dilution of Black Voting Strength.

Since "[a] court-ordered plan . . . must be held to higher standards than a State's own plan" (*Chapman*,

supra, at 26), it follows that any plan ordered into effect by a District Court must be strictly scrutinized to insure that dilution or fragmentation of black voting strength is scrupulously avoided. This is particularly true here, where because of past discrimination in voting and disfranchisement through discriminatory multi-member districts, the District Court was under an affirmative duty "to render a decree which will so far as possible eliminate the discriminatory effects of the past as well as bar like discrimination in the future." *Louisiana* v. *United States,* 380 U.S. 145, 154 (1965).

In *Chapman* this Court held that absent persuasive justifications, "a court-ordered reapportionment plan of a state legislature must avoid use of multimember districts" (420 U.S. at 26-27) because of the "practical weaknesses inherent in such schemes" (*id.* at 15) and because of their potential for minimizing or cancelling out minority voting strength (*id.* at 17-19). By analogy, court-ordered single-member redistricting plans should avoid unnecessary dilution of black voting strength regardless of whether adoption of the same plan by a state legislature would have been unconstitutional.

This Court and the lower appellate courts have indicated that black voting strength is unconstitutionally minimized and cancelled out in single-member districts when heavy black population concentrations are unnecessarily fragmented and dispersed, or combined with heavier white population concentrations to create districtwide white majorities. In promulgating a court-ordered plan in *Taylor* v. *McKeithen,* 407 U.S. 191 (1972), the District Court rejected the state attorney general's plan for four senate seats in New

Orleans on grounds that it would "operate to diversify the Negro voting population throughout the four districts and thus significantly dilute their vote" and would practically eliminate "the possibility of a Negro being elected from any of the four districts," while the court approved plan would at least give blacks "a fair chance in two out of the four districts . . ." (*id.* at 193). When on appeal the Fifth Circuit reversed without opinion and adopted the attorney general's alternative division of New Orleans (*id.*), this Court vacated its judgment and remanded for a reasoned justification of its decision.

In two leading cases, the Fifth Circuit has held unconstitutional county redistricting plans which fragmented black voting strength. *Robinson* v. *Commissioners Court, Anderson County, Texas,* 505 F.2d 674 (5th Cir. 1974); *Moore* v. *Leflore County Bd. of Election Comm'rs,* 502 F.2d 621 (5th Cir. 1974). In *Robinson* the Fifth Circuit struck down a plan which—by means of irregularly shaped districts characterized as a "wedge" and a "peninsula" (505 F.2d at 679)—"diced" the heavy black concentration in southwest Palestine "into three parts, each in a different new precinct" (*id.* at 678) to "fragment what could otherwise be a cohesive voting community" (*id.* at 679). In *Moore,* the District Court struck down the Kellum Plan which

> "utilized narrow corridors to bring into southwest Greenwood [the heaviest black concentration, containing 44.2% of the county's black population] the lines of four districts (Beats 1, 2, 3, and 5), whereby the concentrations of black residents heretofore in Beat 3 were broken up and placed in those several districts." 361 F. Supp. 603, 604.

The District Court found that "the net result has been to dilute and fractionate the black voting strength in the election of public officials chosen in district balloting" (361 F. Supp. at 606). Despite the fact that all five resulting districts had black population majorities, the Fifth Circuit affirmed, noting that the Kellum Plan substantially reduced the proportion of blacks in all but one district and that "in terms of registered voters, blacks would have exceedingly slim majorities in some of these districts and minorities in others" (502 F.2d at 624, footnote omitted):

> "The mere existence of a black population majority does not preclude a finding of dilution. * * * The point is that against this background [prior history of racial discrimination affecting the right to vote], the Kellum Plan diluted the black vote; by retaining the barest of black population majorities, it enhanced the possibility of continued black political impotence." 502 F.2d at 624.

See also, *Sims* v. *Baggett*, 247 F. Supp. 96 (M.D. Ala. 1965) (three-judge court).

Accordingly, there was no good reason, and the District Court failed to state any, why the District Court should have rejected—without even a hearing—the objections presented by the private plaintiffs and the Department of Justice that certain districts in its Senate and House plans diluted black voting strength, or the alternatives proposed by the parties which would have remedied this dilution. The question presented by these objections was not—as the District Court seemed to think [101]—whether plaintiffs had sustained their

[101] Opinion of Nov. 12, 1976 (App., Vol. III, pp. 223-26).

burden of proving lack of access to the political process under the standards of *White* v. *Regester*, 412 U.S. 755 (1973). But rather the question was whether in promulgating a court-ordered redistricting, the District Court abused its discretion in refusing to accept or grant a hearing on the plaintiffs' objections and alternative plans showing that the court's own districts effectuated an invidious dilution of black voting strength with the effect of depriving substantial black population concentrations—sufficiently large and compact to create majority black legislative districts—of the opportunity to elect legislators of their choice.

The District Court accepted the notion that because it was formulating a remedy, color-consciousness was required, cf. *Swann* v. *Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 15-16 (1971), when it adopted as one of its criteria: "There shall be no minimization or cancellation of black voting strength" (419 F. Supp. at 1076). A color-conscious remedy was particularly required in this case, since nondiscriminatory single-member legislative districts were necessary to remedy the decades of racial discrimination against black voters which has denied them effective legislative representation, first by denying them the right to vote, and then by denying them the opportunity to make their vote effective through at-large and multi-member district legislative voting. Color-conscious relief is necessary in redistricting cases because without a thorough understanding of the existence and location of minority voting strength, the trial court might well devise a remedy which would, in the words of the Fifth Circuit, "accomplish the same dilution as the original invalid apportionment." *Robinson* v. *Commissioners Court*, *supra*, 505 F.2d at 682. This is not to say that color-

consciousness makes blacks constitutionally entitled to a percentage of the population or vote in any particular district. It does mean that the remedy should be one which avoids the dilution of the invalid plan by avoiding, wherever possible, fragmentation and dilution of black voting strength.

The question is whether the court-ordered district "designedly or otherwise . . . operate to minimize or cancel out the *voting strength* of racial . . . elements of the voting population." *Burns* v. *Richardson,* 384 U.S. 73, 88 (1966); *Fortson* v. *Dorsey,* 379 U.S. 433, 439 (1965) (emphasis added). Because the relevant criterion of dilution is "voting strength," the existence of a black population majority in a particular district does not preclude a finding of dilution. *Zimmer* v. *McKeithen,* 485 F.2d 1297, 1303 (5th Cir. 1973) (en banc), *aff'd on other grounds sub nom. East Carroll Parish School Board* v. *Marshall,* 424 U.S. 636 (1976). Because of past exclusion from the electoral process, and because of depressed social and economic conditions, voter registration and electoral participation among blacks in Mississippi tends to be disproportionately lower than among whites (Section I, *supra*). Next, census statistics for Mississippi indicate that voting age whites comprise a disproportionately higher percentage of the population than blacks—two out of every three whites are of voting age (67.23%), but only one out of every two blacks (52.91%) is over 18 years of age.[102] Further, the most recent available registration statistics indicate that only 66% of the eligible blacks are registered to vote as compared with 76% of

[102] U.S. Bureau of the Census, 1970 CENSUS OF POPULATION, GENERAL POPULATION CHARACTERISTICS: MISSISSIPPI, PC(1)-B26, Table 22, pp. 26-53, 26-54 (1971).

the eligible whites.[103] Thus, simply because blacks may comprise a majority of the total population of a legislative district does not mean there is no dilution of black voting strength if, because of past discrimination and other socio-economic factors, blacks comprise a minority of the voting age population or registered voters.

Measured by these standards, and by the proof of other, nondiscriminatory alternatives to the districts ordered into effect by the District Court, certain districts in both the District Court's Senate and House plans unconstitutionally dilute black voting strength.

III. THE DISTRICT COURT ERRED IN REFUSING TO ORDER MORE THAN TWO SPECIAL ELECTIONS IN TWO HOUSE DISTRICTS.

All prior court-ordered reapportionment plans in this case—by employing multi-member districts and at-large voting—consistently have failed to conform to this Court's rulings in *Connor* v. *Williams,* 404 U.S. 549 (1972), and *Connor* v. *Waller,* 421 U.S. 656 (1975), that in court-ordered reapportionment plans single-member districts are to be preferred. The 1971 and 1975 legislative elections proceeded on the basis of court-ordered plans employing for a majority of both houses of the Mississippi Legislature multi-member districts and countywide voting which denied black voters the opportunity of effective participation in the political process. The temporary plan ordered into effect by the District Court for the 1975 legislative elections not only was almost identical to the 1971 plan previously vacated by this Court, but also was based on the 1975 plan enacted by the Mississippi Legislature

[103] Hearing of May 7, 1975, Ex. P-10 (Barber dep.), Dep. Ex. 2.

to which the Attorney General had objected under Section 5 of the Voting Rights Act of 1965 as racially discriminatory.

The 1975 plan is based on single-member districts statewide for the first time; it thus conforms in that respect to this Court's requirements for court-ordered plans. Yet, the District Court has nonetheless failed to effectuate all the relief possible under the 1976 plan by refusing to grant the special elections needed to correct the discrimination of black voting strength perpetuated in the 1971 and 1975 legislative elections, conducted under discriminatory reapportionment plans. The District Court's Final Judgment of November 18, 1976 determined that special elections were necessary in none of the 52 new Senate districts and only two of the 122 new single-member House districts.

Contrary to the specific directions of this Court in *Connor* v. *Coleman, supra,* that any special elections necessary be ordered "to coincide with the 1976 November Presidential and congressional elections, or in any event at the earliest practicable date thereafter," the lower court refused to order any special elections at all prior to the convening of the 1977 regular session of the Mississippi Legislature, instead preferring to stay special elections it felt necessary until the outcome of the instant appeal.

In 1971, on instructions from this Court to devise single-member legislative districts for Hinds County, *Connor* v. *Johnson,* 402 U.S. 690, 692 (1971), the District Court found as an "irrefragable fact" that there were "insurmountable difficulties" which prevented the division of Hinds County into single-member districts (330 F. Supp. 521, 523). What was impossible to accomplish in 1971 was accomplished in 1975 be-

tween June 10 (the date of the Attorney General's objection) and July 11. Hinds County was divided into single-member districts for House and Senate (Order of July 11, 1975, App., Vol. II, pp. 228, 233) and in the 1975 elections three black representatives were elected from the three black majority House districts, the first from Hinds County since Reconstruction. The District Court's erroneous 1971 finding thus prevented the election of black legislators and prevented the black voters of Hinds County from electing legislators of their choice for four years.

In 1975 this Court reversed the judgment of the District Court sustaining the constitutionality of the Mississippi Legislature's 1975 reapportionment plan, and directed the District Court

> "if it should become appropriate [after submission of the Legislature's plan under Section 5], to entertain a proceeding to require the conduct of the 1975 elections pursuant to a court-ordered reapportionment plan that complies with this Court's decisions in *Mahan* v. *Howell,* 410 U.S. 315 (1973), *Connor* v. *Williams,* 404 U.S. 549 (1972), and *Chapman* v. *Meier,* 420 U.S. 1 (1975)." *Connor* v. *Waller,* 421 U.S. 656.

The 1975 temporary court-ordered plan, ordered into effect after the Attorney General objected to the Mississippi legislation, failed to comply with this Court's decisions in *Mahan, Connor,* and *Chapman.* Seventy-three percent of the membership of the Mississippi House of Representatives and 54 percent of the membership of the Mississippi Senate were elected from multimember and floterial districts in a plan with total deviations from population equality of 19.73 percent in the House (excluding floterial districts) and 18.90 percent in the Senate (excluding the floterial district).

Now, the final judgment of the District Court, by denying any special election relief for all but two of the new single-member House districts created in the permanent plan, denies black voters who resided in discriminatory at-large and multi-member districts in the 1971 and 1975 elections the opportunity to elect legislators of their choice for another four years. The result is to perpetuate an improperly constituted state legislature and to deny black voters the opportunity to participate effectively in the electoral processes until 1979.

The voters of Mississippi have suffered for eleven years under court-ordered legislative reapportionment plans which failed to meet this Court's requirements for court-ordered plans and which in the face of an extensive past history of official discrimination affecting the right to vote in Mississippi, excluded black citizens from the opportunity to elect legislators of their choice. The permanent plan now ordered into effect by the District Court provides single-member districts statewide which replace the old discriminatory multi-member districts of prior plans. Now that this past dilution of black voting strength has been alleviated, special elections in these districts should be ordered without further delay. Justice has been denied by delay for the past twelve years of litigation in this case, and the injustice and inequities of past discrimination will be perpetuated unless this Court acts now to order additional special elections. Plaintiffs call upon this Court to intervene once again to secure plaintiffs' constitutional and legal rights, to grant plaintiffs full and effective relief to cure the discrimination of the District Court's prior multi-member district plans, and to effectuate its own order to the District Court to order "any necessary special elections" and to schedule those elections to be held "at the earliest practicable date."

A. Senate Districts.

The District Court refused to disturb the all-white Mississippi Senate by refusing to order any interim special elections in any of the new Senate districts, stating:

> "There is no justification for ordering special elections in any newly created senatorial district. Every such district with a black population majority was part of a black majority district in 1975. The only difference is that there no longer will be any multiple member districts." Opinion of November 12, 1976 (App., Vol. III, p. 226).

In finding that there was no discrimination in the 1975 temporary court-ordered Senate districts, the District Court relied upon its prior opinion of May 20, 1975, 396 F. Supp. 1308, sustaining the constitutionality of the Mississippi Legislature's 1975 reapportionment plan (*id.*, pp. 223-25).[104] In that opinion, the District Court had held that the Legislature's plan contained 8 black majority senatorial districts (according to 1970 Census data) electing a total of 12 senators (396 F. Supp. at 1326). However, the District Court ignored the evidence—uncontradicted and unimpeached in this record—that (1) projected 1975 voting age population (VAP) statistics indicated that by 1975 four of these Senate districts, electing five senators, had white

[104] This reliance by the District Court on its 1975 opinion was itself improper. In reversing the District Court's 1975 judgment, this Court held: "The District Court accordingly also erred in deciding the constitutional challenges to the Acts [the Mississippi Legislature's plan] based upon claims of racial discrimination." *Connor* v. *Waller*, 421 U.S. 656 (1975).

voting age population majorities,[105] and that (2) because of disproportionately lower black registration and turnout it was extremely difficult, if not impossible, for blacks to elect legislators of their choice in the remaining four districts.[106]

Under the District Court's new single-member Senate plan, 14 districts have black population majorities, and six of those districts have black 1975 VAP majorities.[107] Under plaintiffs' Modified Henderson Plan and Census Tract Plan for Hinds County, 15 Senate districts have black population majorities, and eight of those districts have black 1975 VAP majorities (*supra,* Section IIB)

B. House Districts.

The District Court found that there were five "newly created black majority districts, brought into existence where no black majority district previously

[105] E. Bryant and S. El-Attar, POPULATION OF MISSISSIPPI LEGISLATIVE AND CONGRESSIONAL DISTRICTS, 1970, AND PROJECTIONS TO 1975 (Mississippi State University, 1973) (Hearing of May 7, 1975, Ex. P-13). These districts were:

District	No. of Seats	Total Pop. % Black	1975 Voting Age Population % White	% Black
9	1	57%	54.33%	45.27%
13	1	58%	50.98%	49.02%
14	1	52%	58.45%	41.55%
25	2	53%	52.36%	47.37%

[106] Hearing of May 7, 1975, Tr. pp. 219-40 (App., Vol. II, pp. 81-113), Exs. P-30, P-31.

[107] Plaintiffs' Motion to Alter or Amend Judgment, filed Sept. 20, 1976 (App., Vol. III, p. 164); J.S., *Connor* v. *Finch,* No. 76-935, App. p. 6a.

existed." Opinion of November 12, 1976 (App., Vol. III, p. 226). The court ordered special elections in only two of these new majority black single-member districts (Districts 79 and 97). The District Court refused to order special elections in two of the new black districts (Districts 52 and 81), stating that this would require special elections in adjoining districts (*id.,* pp. 226-28), and in a third (District 3) because a black candidate lost to a white candidate in the 1975 elections (although voting was countywide in that district in the 1975 elections) (*id.,* p. 228).

The reasons stated by the District Court for refusing to order interim special elections in the three new majority black districts are totally inadequate:

District 52 (Noxubee County, Lowndes County: Crawford and Artesia Precincts). In both the 1971 and 1975 court-ordered plans, black voting strength in majority black Noxubee County (65.77% black) was completely cancelled out by combining Noxubee with more .populous majority white Lowndes County (67.07% white) and Oktibbeha County (64.58% white) in a floterial district and floterial subdistrict, both of which were majority white in population and which altogether elected five representatives.[108] Now blacks who constitute the majority population of Noxubee County have the opportunity to elect legislators of their choice in new District 52, a single-member dis-

[108] The total floterial district (Noxubee, Lowndes, and Oktibbeha) (District 23B), had a white population majority of 61.2% (1970 Census), and a white projected 1975 voting age population majority of 71.0% (Ex. P-13), and the subdistrict (Noxubee and Oktibbeha) (District 23A) had a white population majority of 54.4% (1970 Census), and a white projected 1975 voting age population majority of 66.6% (Ex. P-13).

trict in which blacks constitute 68.0% of the total population and 59.4% of the projected 1975 voting age population.

District 81 (Claiborne and Jefferson Counties). In both the 1971 and 1975 court-ordered plans, majority black Claiborne County (74.58% black) was combined with more populous, majority white Warren County (58.85% white) for the election of three representatives in a multi-member district which was 52.7% white in population (1970 Census) and 58.5% white in projected 1975 voting age population (Ex. P-13). Now for the first time blacks in Claiborne County—and adjoining majority black Jefferson County—have the opportunity to elect legislators of their choice in new District 81 which is 74.9% black in total population (1970 Census) and 69.9% black in 1975 voting age population (Ex. P-13).

Apparently, the District Court based its refusal to order special elections in these districts on the fact that neither of them has an incumbent representative. Thus, the District Court apparently reasoned, special elections in adjoining districts would be necessary to avoid increasing the membership of the House of Representatives. But this justification totally fails to outweigh the constitutional necessity of special election relief to remedy the unconstitutional dilution of black voting strength present in the prior discriminatory multi-member districts. The District Court clearly had the authority to authorize a slight increase in the House to meet constitutional requirements, *Minnesota State Senate* v. *Beens,* 406 U.S. 187, 199 (1972), and an increase of two representatives from black majority districts would not, as the District Court expressed (*id.,*

pp. 229-30), dilute the legislative voting strength of the presently sitting four black members.[109]

District 3 (Marshall County, Beats 1, 2, 3, and 4). In the 1971 plan, black voting strength in Marshall County (62.0% black) was cancelled out when Marshall was combined with more populous, majority white Desoto County (64.7% white) in a majority white (54.0% white) multi-member district electing three representatives (District 3). The District Court attempted to cure this dilution in the 1975 plan by giving Marshall one representative elected countywide, but this created a single-member district with 5,856 persons in excess of the norm (18,171), leaving Marshall County voters unconstitutionally underrepresented by a total variance of +32.23%. Now black voters in Marshall County have equal representation in new District 3 which is 67.2% black in total population (1970 Census) and 57.5% black in projected 1975 voting age population (Ex. P-13).

Here the District Court refused an interim special election because a black legislative candidate lost in 1975 in countywide voting. But the 1975 district was a different district than the new 1976 district. Black voters in Marshall County might well have believed that a black candidate did not have a chance of being elected to the legislature in countywide voting;[110] but

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[109] Alternatively, as we pointed out in our Application to Vacate Stay Entered by District Court Pending Appeal, if special elections are ordered in all majority black House districts in the permanent plan, only two additional special elections would be necessary to avoid increasing the membership of the House.

[110] The uncontradicted testimony in this case indicates that blacks in Mississippi do not vote when they believe they cannot influence the outcome of an election. Hearing of May 7, 1975, Ex. P-8 (Henderson dep.), pp. 49-50, Ex. P-10 (Barber dep.), p. 35.

the chances of black representation are increased when the candidate is running in only four supervisors' districts, all of which have black county officials on the district level.[111]

In discussing only these five districts, the District Court ignored the evidence that other multi-member and countywide districts in its 1975 plan discriminated against black voting strength. In old District 33, Adams County (51.9% white) elected two representatives countywide; new single-member District 89 consisting of part of Adams County under the District Court's plan has a slight black population majority of 53%, and plaintiff-intervenor and plaintiffs have suggested other alternative plans for that area which provide majority black districts. In *Moore* v. *Leflore County Board of Election Comm'rs,* 361 F. Supp. 603, 613-14 (N.D. Miss. 1972), aff'd, 502 F.2d 621 (5th Cir. 1974), the District Court in a county redistricting case held, in an opinion affirmed by the Fifth Circuit, that at-large, countywide voting in Leflore County unconstitutionally diluted black voting strength. Yet in the 1975 legislative election voting in Leflore County was at-large in a multi-county district (District 17) consisting of Leflore and Carroll Counties, electing three representatives, in a district with a 52.7% white projected 1975 voting age population majority (Ex. P-13).

In refusing to consider any other special elections for the House, the District Court referred to its 1975 decision, reversed by this Court, finding no unconstitutional dilution in its 1975 plan (Order of November 12, 1976, App., Vol. III, pp. 223-26). In that decision the District Court held that the Legislature's plan

[111] Joint Center for Political Studies, NATIONAL ROSTER OF BLACK ELECTED OFFICIALS, Vol. 6 (August, 1976).

contained 10 majority black House districts (based on 1970 Census data) electing 26 representatives (396 F. Supp. at 1326). But again, the District Court ignored the uncontradicted evidence that measured against projected 1975 VAP statistics (Ex. P-13), five of these House districts, electing 12 representatives, had white voting age population majorities,[112] and that because of disproportionately lower black registration and turnout it as extremely difficult, if not impossible, for black voters to elect legislators of their choice in three other districts, electing 9 representatives.[113]

Under the District Court's new single-member House plan, approximately 30 districts have black population majorities, and 21 of those districts have black 1975 VAP majorities. New Districts 48, 49, 57, 64, 65, and 67 either already had black representation or were majority black single-member districts in the 1975 plan; four of them are currently represented by black legislators. Hence, there is no need for special elections in those districts.

[112] Ex. P-13. These districts were:

Districts	No. of Seats	Total Pop. % Black	1975 Voting Age Population % White	% Black
12	1	60%	50.0%	50.0%
15	4	55%	50.6%	49.4%
17	3	57%	52.7%	47.3%
29	2	56%	52.9%	47.1%
34	2	54%	54.2%	45.8%

[113] Hearing of May 7, 1975, Tr. 219-40 (App., Vol. II, pp. 81-113), Exs. P-30, P-31.

C. Special Election Relief.

Given the magnitude of the deprivation—a majority of both houses of the Mississippi Legislature being elected from discriminatory multi-member and county-wide districts—and its length in time—spanning three legislative elections over a ten-year period, this Court should direct the District Court to order special legislative elections in all new single-member black majority districts—or at least districts with black voting age population majorities—in its permanent plan, except for those six House districts which either elected black representatives or were black majority single-member districts in the District Court's 1975 temporary plan.[114] Special elections should be ordered for both Senate and House districts. If this Court accepts plaintiffs' contentions that the District Court's Senate plan and certain districts in the District Court's House plan fail to meet constitutional requirements for court-ordered plans, and orders revisions in those plans, then the black majority districts in the revised plans should also be considered for special election relief. The Court should also direct that these special legislative elections be held "at the earliest practicable date," *Connor* v. *Coleman, supra,* 425 U.S. at 679.[115]

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[114] A listing of the House districts contained in the District Court's permanent plan, and racial composition of new and old districts, is contained in our Application to Vacate Stay Entered by the District Court Pending Appeal, *Connor* v. *Finch*, No. 76-777, p. 24. No special elections are necessary in new Districts 48, 49, 57, 64, 65, or 67.

[115] The District Court itself held: "Should special elections be ordered in any district, the same will be held only after fully adequate notice and *in time for the person elected to take his seat when the Legislature is convened in regular session in January, 1977.*" 419 F. Supp. at 1114 (emphasis added).

Given that the 1975 temporary plan violated this Court's mandate in *Connor* v. *Waller, supra,* was based on a legislative plan to which the Attorney General had objected for racial discrimination under Section 5 of the Voting Rights Act of 1965, and diluted black voting strength through multi-member districts and at-large voting, special elections are required. *Town of Sorrento* v. *Reine,* No. 75-93, decided April 26, 1976; *Hadnott* v. *Amos,* 394 U.S. 358 (1969).[116] The Mississippi Supreme Court itself has ordered special election relief when necessary to cure unlawful defects in regularly scheduled elections. See *Taylor* v. *Monroe County Board of Supervisors,* 421 F.2d 1038, 1042 (5th Cir. 1970). As previously indicated, the District Court made clear that its 1975 court-ordered plan established "Certain Temporary Districts for the Election of Senators and Representatives in the Mississippi Legislature for the Year 1975 Only" (App., Vol. II, p. 207). On three separate occasions the District Court indicated that special interim legislative elections would be ordered to cure any constitutional violations present in its temporary 1975 plan (*supra,* pp. 17-18). Thus, incumbent legislators ran for office in 1975 knowing that special elections might be ordered to cure the defects of the 1975 plan. Under these circumstances, "no office-holder has a vested

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[116] See also, *Toney* v. *White*, 488 F.2d 310 (5th Cir. 1973) (en banc); *Keller* v. *Gilliam*, 454 F.2d 55 (5th Cir. 1972); *Howard* v. *Adams County Board of Supervisors*, 453 F.2d 455 (5th Cir. 1972) (Orde. of July 29, 1971), cert. denied, 407 U.S. 925 (1972); *Hall* v. *Issaquena County Board of Supervisors*, 453 F.2d 404 (5th Cir. 1971) (Order of July 29, 1971); *Taylor* v. *Monroe County Board of Supervisors*, 421 F.2d 1038, 1042 (5th Cir. 1970); *Hamer* v. *Campbell*, 358 F.2d 215 (5th Cir. 1966), cert. denied, 385 U.S. 851 (1966).

right in an unconstitutional office any more than he has a right to be elected to that office." *Reynolds* v. *State Election Board,* 233 F. Supp. 323, 330 (W. D. Okla. 1964) (three-judge court). See also, setting aside legislative elections or shortening the terms of legislative office, *Mann* v. *Davis,* 238 F. Supp. 458 (E.D. Va. 1964) (three-judge court), *aff'd,* 379 U.S. 694 (1965); *Moss* v. *Burkhart,* 220 F. Supp. 149 (W.D. Okla. 1963) (three-judge court), *aff'd sub nom. Williams* v. *Moss,* 378 U.S. 558 (1964); *W.M.C.A., Inc.* v. *Lomenzo,* Order of July 27, 1964 (unreported), *aff'd sub nom. Hughes* v. *W.M.C.A., Inc.,* 379 U.S. 694 (1965).

IV. THE DISTRICT COURT ERRED IN DENYING PLAINTIFFS THEIR REASONABLE ATTORNEYS' FEES.

Section 402 of the 1975 amendments to the Voting Rights Act of 1965, 89 Stat 404, 42 U.S.C. § 1973*l*(e), authorizes courts to award reasonable attorney's fees to the prevailing party "in any action or proceeding to enforce the voting guarantees of the fourteenth or fifteenth amendment."[117] Since this action was brought to enforce the voting guarantees of the Fifteenth Amendment and the Equal Protection Clause of the Fourteenth Amendment, and since plaintiffs are the prevailing party—having succeeded in their efforts to invalidate each reapportionment plan enacted by the Mississippi Legislature and having succeeded in their goal of obtaining single-member legislative districts—plaintiffs are entitled to an award of reasonable attorney's fees under this Act.

[117] "That section would, of course, also authorize attorney's fees in cases brought under statutes designed to enforce or enacted under either or both of those amendments." 121 Cong. Rec. H 4720 (daily ed. June 2, 1975) (remarks of Cong. Edwards).

In its Opinion on November 12, 1976, the District Court awarded plaintiffs their taxable costs of the litigation, but denied plaintiffs' motion for an award of attorney's fees.[118]

Although plaintiffs' motion was based on the 1975 amendments to the Voting Rights Act, the District Court in its opinion failed to take note of this statutory authorization. Rather, the District Court stated only:

> "The Court has heretofore found that the Mississippi Legislature made a good faith effort to reapportion itself in 1973 and 1975. The 1975 effort was upheld by this Court but failed on account of the disapproval of the Attorney General of the United States. We are thus of the opinion that no attorneys' fees are allowable in this case." Opinion of November 12, 1976 (App., Vol. III, p. 230).

This justification is insufficient on two counts. First, the finding that the Legislature made a good faith effort to reapportion itself in 1973 and 1975 is clearly erroneous. In both 1973 and 1975 the Mississippi Legislature rejected reapportionment plans providing greater equality of population among the districts in favor of plans providing less equality of population and higher variances.[119] Further, the Legislature continued to enact plans under which a majority of both

[118] Plaintiffs' motion is reproduced herein as Appendix A, *infra.*

[119] See pp. 13-14, *supra.* At the Hearing of May 7, 1975, Dr. Henderson testified that based on his computer analysis of all the possible combinations of counties for legislative redistricting in Mississippi, there were "at least several hundred" possible alternatives which would have kept county boundaries intact and still have provided greater equality of population among the districts than the Mississippi Legislature's plans. Tr. 97 (App., Vol. II, p. 14).

houses were elected from multi-member and county-wide districts, despite plaintiffs' contentions that these multi-member districts diluted black voting strength. There is no evidence in this case to indicate that the Legislature made a good faith effort to avoid minimizing or cancelling out black voting strength. Moreover, the District Court's apparent reference to its Opinion of May 20, 1975 (396 F. Supp. 1308) sustaining the constitutionality of the Legislature's 1975 plan is entirely improper; in reversing the District Court's judgment this Court held that the District Court "erred in deciding the constitutional challenges to the Acts based upon claims of racial discrimination." *Connor* v. *Waller, supra,* 421 U.S. at 656. Indeed, the Attorney General's Section 5 objection to the Legislature's plan negates the District Court's finding.

Second, even if the District Court's finding of good faith is correct, that finding is not a sufficient reason for denying an award of attorney's fees authorized by the statutes applicable here. In *Newman* v. *Piggie Park Enterprises, Inc.,* 390 U.S. 400 (1968), successful plaintiffs in a public accommodations discrimination case sought an award of attorneys' fees under Title II of the Civil Rights Act of 1964, 42 U.S.C. § 2000a-3(a). The Court of Appeals for the Fourth Circuit instructed the District Court to award counsel fees under the Act only to the extent that the defendants' defenses had ben advanced "for purposes of delay and not in good faith" (390 U.S. at 401). This Court reversed, holding that since the Act had been passed by Congress to vindicate a policy that Congress considered of the highest priority, successful plaintiffs under the Act "should ordinarily recover an attorney's fee unless special circumstances would render such an award unjust" (*id.* at 402).

Congress in enacting the 1975 attorney's fee amendment to the Voting Rights Act made clear that the *Newman* standard should likewise apply to awards of attorney's fees under the new statute:

> "It is intended that the standards for awarding fees under Sections 402 and 403 be generally the same as under the fee provisions of the 1964 Civil Rights Act. A party seeking to enforce the rights protected by the Constitutional clause or statute under which fees are authorized by these sections, if successful, 'should ordinarily recover an attorney's fee unless special circumstances would render such an award unjust.' *Newman* v. *Piggie Park Enterprises, Inc.,* 390 U.S. 400, 402 (1968)." S. Rep. No. 94-295, 94th Cong., 1st Sess. 40-41 (1975) (footnote omitted).

This section was originally introduced in the House of Representatives as Section 402 of H.R. 6219, and the House committee report specifically approved the same standard:

> "The Committee further notes its approval of the prevailing case law which holds that where a statute authorizes it, a successful plaintiff 'should ordinarily recover an attorney's fee unless special circumstances would render such an aware [sic] unjust.' *Newman* v. *Piggie Park Enterprises, Inc.,* 390 U.S. 400, 402 (1968) (per curiam)." H.R. Rep. No. 94-196, 94th Cong., 1st Sess. 34 (1975).

See also, 121 Cong. Rec. H 4720 (daily ed. June 2, 1975) (remarks of Cong. Edwards); 121 Cong. Rec. H 4734-35 (daily ed. June 2, 1975) (remarks of Cong. Drinan).

Under the principles of *Bradley* v. *School Board of City of Richmond,* 416 U.S. 696, 711 (1974), that "a

court is to apply the law in effect at the time it renders its decision, unless doing so would result in manifest injustice or there is statutory direction or legislative history to the contrary," the District Court should have allowed plaintiffs their attorney's fees for all services rendered, including those rendered prior to the effective date of the new law. *Wallace* v. *House,* —— U.S. —— (No. 75-914, decided April 26, 1976), on remand, *Wallace* v. *House,* 538 F.2d 1138, 1146-48 (5th Cir. 1976); *Panior* v. *Iberville Parish School Board,* 543 F.2d 1117 (5th Cir. 1976); *Lytle* v. *Commissioner of Election of Union County,* 541 F.2d 421, 426-27 (4th Cir. 1976); *Ferguson* v. *Winn Parish Police Jury,* 528 F.2d 592, 599 n. 13 (5th Cir. 1976).

Further, in enacting the new law to enforce Fourteenth Amendment guarantees, Congress indicated an express intent that state officials—such as the defendants here—should be held liable for fee awards:

> "As with cases brought under 20 U.S.C. § 1617, the Emergency School Aid Act of 1972, defendants in these cases are frequently state or local bodies or state or local officials. In such cases it is intended that the attorneys' fees, like other items of costs, will be collected either from the official directly, from funds of his agency or under his control, or from the State or local government (whether or not the agency or government is a named party)." S. Rep. No. 94-295, *supra,* at 41-42.

See also, 121 Cong. Rec. H 4720 (daily ed. June 2, 1975) (remarks of Cong. Edwards, a floor leader of the bill in the House).

Subsequent to the filing of plaintiffs' attorney's fees motion, but prior to the November 12, 1976 Opinion of

the District Court, Congress enacted into law the Civil Rights Attorney's Fees Awards Act of 1976, P.L. 94-559, 90 Stat. 2641 (October 19, 1976), which provides an additional and supplemental basis for a fee award in this case since it expressly covers actions like this brought pursuant to 42 U.S.C. § 1983 (Revised Statutes Section 1979). The legislative history of this new act expressly indicates that Congress intended it to apply retroactively to pending cases.[120] As with the new attorney's fee provision of the Voting Rights Act, the legislative history of the Civil Rights Attorneys' Fees Awards Act of 1976 expressly indicates that Congress intended courts to award fees under the new statute regardless of whether the defendants had acted in bad faith and that fees should ordinarily be awarded "unless special circumstances would render such an award unjust,"[121] and to award attorney's fees against state officials.[122] Cf. *Stanton* v. *Bond,* —— U.S. —— (No. 75-1413, decided November 30, 1976).

CONCLUSION

For the foregoing reasons, and on the basis of the authorities cited, this Court should (1) vacate those portions of the District Court's judgment containing the Senate plan and House districts 32, 33, 34, 35, 47, 53, 54, 55, 56, 88, and 89, and remand to the District

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[120] H.R. Rep. No. 94-1558, 94th Cong., 2d Sess. 4, n. 6 (1976); 122 Cong. Rec. S17052 (daily ed., Sept. 29, 1976) (remarks of Sen. Abourezk).

[121] H.R. Rep. No. 94-1558, *supra,* at 6, 9; S. Rep. No. 94-1011, 94th Cong., 2d Sess. 4 (1976).

[122] H.R. Rep. No. 94-1558, *supra,* at 7; S. Rep. No. 94-1011, *supra,* at 5; 122 Cong. Rec. H12160 (daily ed. Oct. 1, 1976) (remarks of Cong. Drinan).

Court for the adoption of, for the Senate, the Modified Henderson Plan and the Census Tract Plan for Hinds County, and for the House, the alternatives proposed by the plaintiffs and/or plaintiff-intervenor; (2) direct the District Court to order special elections in all majority black legislative districts contained in its permanent plan, as revised and amended on remand, except for House Districts 48, 49, 57, 64, 65, and 67, to be held as soon as practicable; and (3) reverse that portion of the District Court's judgment denying plaintiffs an award of reasonable attorney's fees.

Respectfully submitted,

FRANK R. PARKER
THOMAS J. GINGER

Lawyers' Committee for
Civil Rights Under Law
Post Office Box 1971
Jackson, Mississippi 39205

ROBERT A. MURPHY
ELIZABETH R. RINDSKOPF
WILLIAM E. CALDWELL

Lawyers' Committee for
Civil Rights Under Law
Suite 520 Woodward Building
733 Fifteenth Street, N.W.
Washington, D.C. 20005

Attorneys for Private Appellants,
Peggy J. Connor, et al.

APPENDIX

APPENDIX A

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

CIVIL ACTION No. 3830(A)

(CAPTION OMITTED IN PRINTING)

Motion for an Award of Attorney's Fees

(FILED JUNE 15, 1976)

Plaintiffs, by their attorneys, move the Court pursuant to the 1975 amendments to the Voting Rights Act of 1965, Section 402, P.L. 94-73, 89 Stat. 404 (August 6, 1975) for an award of reasonable attorney's fees in favor of counsel for the plaintiffs covering the period March 14, 1973 to present in the amount of $21,350, based on 427 hours of work necessarily performed by lead counsel for the plaintiffs at an hourly rate of $50 per hour for a case of this nature on the grounds:

(a) An award of attorney's fees is authorized by the above-cited statute, *Wallace* v. *House,* 44 U.S.L.W. 3607 (U.S. April 26, 1976) (No. 75-914); *Hall* v. *Issaquena County Bd. of Supervisors,* 526 F.2d 711 (5th Cir. 1976); and

(b) The requested $50 hourly rate has been approved by the U.S. Court of Appeals for the Fifth Circuit, *Davis* v. *Board of School Comm'rs of Mobile County,* 526 F.2d 865 (5th Cir. 1976).

In support of the award, plaintiffs submit herewith the affidavit of lead counsel for the plaintiffs testifying to the number of hours of service actually and necessarily performed on behalf of the plaintiffs, and supporting the

hourly rate requested as prevailing and reasonable in this case.

Respectfully submitted,

/s/ FRANK R. PARKER
Frank R. Parker
Lawyers' Committee for
Civil Rights Under Law
233 North Farish Street
Jackson, Mississippi 39201

Attorney for Plaintiffs

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

(CAPTION OMITTED IN PRINTING)

Affidavit in Support of Motion for Award of Attorney's Fees

STATE OF MISSISSIPPI)
) ss.
COUNTY OF HINDS)

FRANK R. PARKER, after first being duly sworn, deposes and says:

1. I was admitted as counsel for the plaintiffs *pro hac vice* in this case on April 5, 1973. Order of April 5, 1973. Since that time I have been lead attorney for the plaintiffs in association with Mississippi co-counsel.

2. *Qualifications.* I received my LL.B. degree from Harvard Law School in June, 1966. I have been engaged in legal work and practice of the law since my admission to the Bar of the U.S. District Court for the District of Columbia on January 20, 1967, first with the Office of General Counsel, U.S. Commission on Civil Rights (1966-December, 1968), and then with the Lawyers' Committee for Civil Rights Under Law (Dec., 1968 to present). I am presently Chief Counsel of the Lawyers' Committee. I am admitted to practice before the U.S. Supreme Court, the U.S. Court of Appeals for the Fifth and District of Columbia Circuits, and the U.S. District Court for the Northern District of Mississippi.

While at Harvard Law School, I assisted in establishing and was a founding editor of the Harvard Civil Rights-Civil Liberties Law Review, which is now in its eleventh year of continuous publication.

As a staff attorney with the U.S. Commission on Civil Rights, I assisted in writing the following Commission staff reports:

Southern School Desegregation, 1966-67 (July 1967)

Political Participation (May 1968) (principal writer)

I have written and published the following law review articles:

"Evans v. Newton and the Racially Restricted Charitable Trust," 13 Howard L.J. 223 (1967)

"County Redistricting in Mississippi: Case Studies in Racial Gerrymandering," 44 Miss. L.J. 391 (1973)

2. *Experience and ability.* Since admission to practice law, I have devoted my time almost exclusively to the subject area of constitutional and civil rights, and after leaving the government, to representing clients in civil rights cases involving racial discrimination. Within the area of civil rights cases, I have developed a specialization in voting rights cases. I have surveyed the case law and secondary sources, including books and law articles on voting rights, and have attended and spoken at national conferences and seminars on the subject. I have been lead counsel for the plaintiffs on a substantial number of voting rights cases involving the right to vote and county redistricting including the following reported cases:

Thompson v. *Brown,* 434 F.2d 1092 (5th Cir. 1969)

Evers v. *State Bd. of Election Comm'rs,* 327 F. Supp. 640 (S.D. Miss. 1971) (three-judge court), appeal dism'd, 405 U.S. 1001 (1972)

Hall v. *Issaquena County Bd. of Supervisors,* 453 F.2d 404 (5th Cir. 1971), 526 F.2d 711 (5th Cir. 1976).

Howard v. *Adams County Bd. of Supervisors,* 453 F.2d 455 (5th Cir. 1971), cert. denied, 407 U.S. 925 (1972),

480 F.2d 978 (5th Cir. 1973), cert. denied, 415 U.S. 975 (1974).

Kirksey v. *Board of Supervisors of Hinds County,* 402 F. Supp. 658 (S.D. Miss. 1975), aff'd, 528 F.2d 536 (5th Cir. 1976), pending on rehearing en banc.

3. *Novelty and difficulty of the questions.* This case at various times presented questions of the applicability of the requirements of Section 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c, and the applicability of the constitutional and statutory voting rights requirements to both legislatively enacted and court-ordered legislative redistricting plans.

4. *Time and labor required.* The following is an accurate itemization, to the best of my personal knowledge, records maintained in the ordinary course of business, and estimation, of the time I have spent preparing, filing, prosecuting, and trying the pleadings and claims of plaintiffs in this case, exclusive of travel time:

3/14/73	Plaintiffs' objections to H.B. 446 and S.B. 1701	7 hrs.
4/10/73	Deposition of Rep. Stone Barefield (all deposition references include preparation and taking of the deposition)	10 hrs.
4/13/73	Dep. of Sen. James "Con" Maloney	6 hrs.
4/13/73	Dep. of Rep. Horace Lester	4 hrs.
4/17/73	Dep. of Lt. Gov. William Winter	6 hrs.
4/17/73	Motion for substitution of parties	1 hr.
4/17/73	Motion for continuance	0.5 hrs.
4/19/73	Plaintiffs' objections to H.B. 3189 and S. B. 2452	8 hrs.

4/20/73	Dep. of Harold E. Sweeney, Jr.	10 hrs.
	Dep. of Dr. David Valinsky	4 hrs.
4/26/73	Motion for leave to file supplemental complaint	15 hrs.
5/3/75	Hearing on motion for leave to file supplemental complaint	3 hrs.
5/20/74	Motion for review and reconsideration of order denying leave to file supp. complaint.	3 hrs.
10/1/74	Deposition upon written interrogatories of Hon. J. Stanley Pottinger	8 hrs.
10/17/74	Dep. of James W. Loewen	10 hrs.
11/1/74	Dep. of Dr. Gordon G. Henderson	10 hrs.
10/11/74	Plaintiffs' request for admission of facts and genuineness of documents	30 hrs.
11/15/74	Motion to compel answers to request for admissions	1 hr.
	Memorandum in support of motion to compel answers	5 hrs.
	Reply memorandum in support of motion to compel answers	4 hrs.
12/2/74	Hearing on motion to compel answers	2 hrs.
1/30/75	Motion for order to show cause	2 hrs.
2/3/75	Dep. of Rims Barber	12 hrs.
2/7/75	Hearing and preparation for hearing	20 hrs.
2/14/75	Memornadum of law	27 hrs.
3/17/75	Dep. of Henry J. Kirksey	10 hrs.
4/15/75	Amended complaint (per order of Court)	15 hrs.
4/17/75	Motion to alter or amend judgment	5 hrs.

5/7/75	Hearing and preparation for hearing	20 hrs.
	Plaintiffs' supplemental post-trial memorandum	8 hrs.
5/14/75	Motion to supplement the record	1 hr.
5/22/75	Notice of Appeal	0.5 hr.
5/23/75	Motion for stay pending appeal (Dist. Ct.)	1 hr.
5/23/75	Jurisdictional statement (U.S. Sup. Ct.)	30 hrs.
5/23/75	Application for stay pending appeal (U.S. Sup. Ct.)	8 hrs.
5/27/75	Certificate of compliance with Sup. Ct. rule	1 hr.
6/3/75	Supplemental memorandum (per order of U.S. Sup. Ct.)	15 hrs.
6/6/75	Motion for temporary restraining order	2 hrs.
6/9/75	Motion for injunctive relief	3 hrs.
6/12/75	Hearing and preparation for hearing	10 hrs.
6/17/75	Memorandum of law on remand	10 hrs.
6/20/75	Hearing and preparation for hearing	15 hrs.
7/3/75	Plaintiffs' objections to proposed court-ordered districts	6 hrs.
7/8/75	Modified Mitchell Plan No. 2	8 hrs.
7/21/75	Motion to alter or amend judgment	15 hrs.
11/15/75	Plaintiffs' county boundary plan (per court order)	10 hrs.
2/9/76	Plaintiffs' supplemental submission on county boundary plan (precinct plan)	20 hrs.
6/14/76	Amendments to supplemental submission	5 hrs.
TOTAL HOURS		427 hrs.

This itemization does not include time spent preparing the recent petition for writ of mandamus and brief and reply brief in support thereof in the U.S. Supreme Court. I estimate spending 35 hours on this matter.

I certify that the above-stated work was necessary to the prosecution of this action and that the services listed were actually and necessarily performed.

5. *Hourly rate.* The plaintiffs in this case are indigent persons who cannot afford to pay attorneys' fees at the prevailing rate in this case, and therefore the Lawyers' Committee for Civil Rights Under Law has no fee arrangement with the plaintiffs. The Lawyers' Committee for Civil Rights Under Law is a privately funded charitable organization which provides legal representation in non-fee generating civil rights cases, and is dependent upon court awards of attorneys' fees in appropriate cases for part of its income. I have made inquiry of attorneys in the Jackson, Mississippi, area regarding the hourly rate that would normally be charged by private practitioners in a case such as this and have determined that the minimum and reasonable hourly rate would be $50.00 per hour.

/s/ Frank R. Parker
Frank R. Parker

(Subscription Omitted in Printing)

(Certificate of Service Omitted in Printing)

APPENDIX B

Counties Subdivided by Constitutional Provision or Statute for Legislative Representation.

Miss. Const., 1890, Section 254.

> "Twelfth—The county of Lauderdale shall have three Representatives, one to be elected by the city of Meridian, one by the county outside the city limits, and one by the whole county including Meridian.
>
> Thirteenth—The county of Adams outside the city of Natchez shall have one Representative and the city of Natchez one Representative.
>
> Fourteenth—The county of Lowndes shall have three Representatives, two of whom shall be elected by that part of the county east of the Tombigbee river, and one by that portion of the county west of said river.
>
> Fifteenth—The county of Oktibbeha shall have two Representatives, one of whom shall be elected by that portion of the county east of the line running north and south between ranges thirteen and fourteen, and the other by that portion of the county west of said line."

Hemingway's Annotated Code of Mississippi, 1917, Section 5341.

> "1. Hereafter the representation in the lower house of the legislature for Warren county shall be selected as follows:
>
> Two representatives shall be elected from the county at large, and may come from any part of the county, and one representative shall be selected outside of the city of Vicksburg and the municipalities adjacent thereto, and the qualified electors of the city

of Vicksburg and the municipalities adjacent thereto shall not vote for the selection of that representative who is to be chosen outside of the territory above specified. (Laws 1906, ch. 124. In effect January 2, 1906)."

Miss. Laws, 1940, ch. 275.

"Eleventh.—The county of Yazoo shall have three representatives, and the county of Hinds shall have three representatives, and they shall have a floater between them. Provided, however, that two of the representatives of Hinds county shall be elected by the city of Jackson and that one of the representatives of Hinds county shall be elected outside the limits of the city of Jackson. Provided further, however, that the district qualifications of the representatives of Hinds county shall not apply to the floater representative."

Miss. Laws, 1954 Gen. Sess., ch. 317.

"Nineteenth.—The County of Chickasaw shall have two representatives, one of whom shall be a resident of and shall be chosen by the qualified electors of that portion of the County in the first judicial district and the other shall be a resident of and shall be elected by the qualified electors of that portion of the County situated in the second judicial district."

APPENDIX C

Recent Discriminatory State Legislation Showing the Unresponsiveness of the Mississippi Legislature to the Needs and Interests of the Black Community and Denials of Equal Access to the Political Process.

Miss. Laws, 1962, ch. 537, requiring at-large election of members of municipal boards of aldermen.	Held to have been enacted for a racially discriminatory purpose to prevent the election of black aldermen, and enjoined. *Stewart* v. *Waller,* 404 F. Supp. 206 (N.D. Miss. 1975) (three-judge court).
Miss. Laws, 1965 Extra. Sess., ch. 11, requiring literacy as a condition to voter registration.	Enjoined as violative of the Voting Rights Act of 1965, *United States* v. *Mississippi,* 256 F. Supp. 344 (S.D. Miss. 1966) (three-judge court).
Miss. Laws, 1965 Extra. Sess., ch. 19, repealing Miss. Code Ann. § 3273 (1956 Recomp.), providing assistance at the polls to illiterate voters.	Held violative of the Voting Rights Act of 1965, assistance to illiterate voters ordered, *United States* v. *Mississippi,* 256 F. Supp. 344 (S.D. Miss. 1966) (three-judge court).
Miss. Laws, 1965 Extra. Sess., ch. 38 (S.C.R. 102), petitioning Congress for constitutional convention to overrule *Reynolds* v. *Sims.*	

Miss. Laws, 1965 Extra. Sess., ch. 39 (S.C.R. 102), petitioning Congress for constitutional convention to eliminate public school desegregation.	
Miss. Laws, 1966, ch. 290, p. 374, amending Miss. Code Ann. § 2870 (1956 Recomp.) to authorize switch to at-large election of county supervisors.	Held to be a change in election laws which must be submitted under Section 5, *Allen* v. *St. Bd. of Elections,* 393 U.S. 544 (1969), after submitted USDJ objected under Section 5, 5/21/69.
Miss. Laws, 1966, ch. 406, authorizing switch from election to appointment of county superintendent of education, and requiring appointment in 11 specified counties.	Same.
Miss. Laws, 1966, ch. 613, increasing the qualifying requirements for independent candidates for office.	Same.
Mi.ss Laws, 1966 Extra. Sess., ch. 41, (S.B. 1504), reapportioning House and Senate including multi-member districts.	Held unconstitutional for malapportionment, *Connor* v. *Johnson,* 265 F. Supp. 492 (S.D. Miss. 1967).
Miss. Laws, 1967 Extra. Sess., S.R. 101, petitioning governor to include in call of session HEW school desegregation guidelines and to declare them null and void in Mississippi.	

Miss. Laws, 1968, ch. 564, p. 946, amending Miss. Code Ann. § 2870 (1956 Recomp.) to authorize at-large election of county supervisors.	Never submitted under Sec. 5 and therefore unenforceable.
Miss. Laws, 1968, ch. 393, authorizing payment of tuition grants to students attending racially segregated private schools formed as an alternative to public school desegregation.	Enjoined as unconstitutional, *Coffey* v. *State Educ. Finance Comm'n,* 296 F. Supp. 1389 (S.D. Miss. 1969) (three-judge court).
Miss. Laws, 1969 Extra. Sess., ch. 27 (H.B. 67), providing loans for educational expenses of students attending racially segregated private schools formed as an alternative to public school desegregation.	Enjoined as unconstitutional, *Coffey* v. *State Educ. Finance Comm'n,* Civil No. 3906 (S.D. Miss. Sept. 2, 1970) (three-judge court).
Miss. Laws, 1970, ch. 374, making freedom of choice school attendance law and policy of state.	
Miss. Laws, 1970, ch. 390 (H.B. 839), establishing discriminatory education requirements for early childhood education and Head-start teachers.	Voided by Federal regulation, amendment to Head Start Policy Manual, Part B, § 3, subparagraph a(1), June 8, 1970.

Miss. Laws, 1970, chs. 506, 508, the "open primary" laws, abolishing party primaries, requiring a majority vote to win general election, etc.	Enjoined for lack of adequate Section 5 clearance, *Evers* v. *State Bd. of Election Comm'rs,* 327 F. Supp. 640 (S.D. Miss. 1971) (three-judge court), appeal dism'd, 405 U.S. 1001 (1972); Section 5 objection by USDJ, 4/28/74.
Miss. Laws, 1970, ch. 543, exempts private schools from corporate franchise tax.	
Miss. Laws, 1971, ch. 394, reapportioning House and Senate including multi-member districts.	Held unconstitutional for malapportionment, *Connor* v. *Johnson,* 330 F. Supp. 506 (S.D. Miss. 1971) (three-judge court), vacated and remanded on other grounds, 404 U.S. 549 (1972).
Miss. Laws, 1971, ch. 493, amending Miss. Code Ann. § 2870 (1956 Recomp.) to authorize switch to at-large election of county supervisors.	Section 5 objection by USDJ, 9/10/71.
Miss. Laws, 1972, ch. 490, § 502, amending voter registration form to ask additional burdensome and harassing questions (¶ 7), amended in 1975 under Congressional pressure reviewing extension of Voting Rights Act of 1965.	

Miss. Laws, 1973, H.C.R. 55, petitioning Congress to call constitutional convention to prohibit pupil assignment in public schools on account of race.	
Miss Laws, 1974, H.C.R. 42, petitioning Congress to repeal the Voting Rights Act of 1965.	
Miss. Laws, 1975, H.B. 907, §§ 2-39, reenactment of the "open primary" law (1966 Laws, ch. 506, 508) rendered unenforceable by Section 5 objection, 4/28/74.	
Miss. Laws, 1975, S.B. 2218, the "James Meredith" law, requiring independents to qualify at the same time as party candidates, similar to provision of 1966 Laws, ch. 613, rendered unenforceable by Section 5 objection, 5/21/69.	
Miss. Laws, 1975, chs. 484, 510 (H.B. 1290 and S.B. 2976), reapportioning House and Senate and including multi-member districts.	Invalidated by Section 5 objection under Voting Rights Act, 6/10/75.

Miss. Laws, 1976, ch. 485, reenacting the "open primary" law previously rendered unenforceable by Section 5 objection, abolishes party primaries, requires a majority vote to win general election.	Invalidated by Section 5 objection under Voting Rights Act, 8/23/76.

Supreme Court, U. S.
FILED
FEB 7 1977
MICHAEL RODAK, JR., CLERK

Nos. 76-777, 76-933, 76-934, 76-935

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

PEGGY J. CONNOR, et al., *Appellants*
and
UNITED STATES OF AMERICA, *Intervenor*
v.
CLIFF FINCH, Governor of Mississippi, et al.

CLIFF FINCH, Governor of Mississippi, et al.,
Appellants
v.
PEGGY J. CONNOR, et al., and the
UNITED STATES OF AMERICA

UNITED STATES OF AMERICA, *Appellant*
v.
CLIFF FINCH, Governor of Mississippi, et al.

PEGGY J. CONNOR, et al., *Appellants*
v.
CLIFF FINCH, Governor of Mississippi, et al.

On Appeal from the United States District Court for the Southern District of Mississippi (Three-Judge Court)

BRIEF FOR THE STATE PARTIES

WILLIAM A. ALLAIN
Special Counsel
Post Office Box 220
Jackson, Mississippi 39205

JERRIS LEONARD
THOMAS A. KAROL
Special Counsel
1747 Pennsylvanina Ave., N.W.
Washington, D.C. 20006

A. F. SUMMER
Attorney General, State of Mississippi

GILES W. BRYANT
Special Assistant Attorney General
Gartin Justice Building
Jackson, Mississippi 39201

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INDEX

	Page
Opinions below	2
Jurisdiction	2
Questions presented	2
Constitutional provisions involved	3
Statement	3
A. History of the litigation	3
1. Reapportionment proceedings prior to 1971	3
2. Reapportionment history and proceedings since 1971	5
B. Reapportionment plans since 1971	19
1. The 1971 court-ordered plan	21
2. The 1973 legislative plan	23
3. The 1975 legislative plan	24
4. The 1975 court-ordered plan	28
5. The 1976 court-ordered plan	30
Summary of Argument	30
Argument	33
A. The district court fragmented county boundaries, contrary to State policy, by refusing to utilize multi-member districts in its reapportionment plan	33
1. As the county is the basic unit of government in Mississippi, the State has always preserved the integrity of county boundaries	33

Page

2. The district court erred in refusing to utilize multi-member districts in its reapportionment plan, and thus fragmenting political boundaries 35

B. Without finding any constitutional infirmities in the reapportionment plan pursuant to which the 1975 elections were held, the district court should not have ordered special elections 47

Conclusion 53

CITATIONS

Cases:

Abate v. Mundt, 403 U.S. 182 (1971) 43
Baker v. Carr, 369 U.S. 186 (1962) 35
Beer v. United States, 425 U.S. 130 (1976) 16, 50
Burns v. Richardson, 384 U.S. 73 (1966) 43, 44, 46, 51
Chapman v. Meier, 420 U.S. 1 (1975) 12, 14, 38, 39, 40, 42, 43
Connor v. Coleman, 425 U.S. 675 (1976) 17, 20, 37, 38
Connor v. Johnson, 256 F.Supp. 962 (S.D.Miss. 1966) 4
Connor v. Johnson, 265 F.Supp. 492 (S.D.Miss. 1967) 4, 5
Connor v. Johnson, 330 F.Supp. 506 (S.D.Miss. 1971) 6, 7, 8, 20, 21, 22, 34, 37, 39
Connor v. Johnson, 330 F.Supp. 521 (S.D.Miss. 1971) 8, 9, 22
Connor v. Johnson, 402 U.S. 690 (1971) 7, 20, 22, 36, 37, 38, 39, 40
Connor v. Johnson, 403 U.S. 928 (1971) 9
Connor v. Waller, 396 F.Supp. 1308 (S.D.Miss. 1975) 12, 13, 24, 26, 27, 34, 38, 48
Connor v. Waller, 421 U.S. 656 (1975)..13, 14, 20, 28, 38, 39
Connor v. Williams, 404 U.S. 549 (1972).....9, 10, 14, 20, 37, 38, 42
Dallas Cty, Ala. v. Reese, 421 U.S. 477 (1975) 43
East Carroll Parish School Board v. Marshall, 424 U.S. 636 (1976) 16
Fortson v. Dorsey, 379 U.S. 433 (1965) 43, 44, 51
Georgia v. United States, 411 U.S. 526 (1973) 14, 15
Kirkpatrick v. Preisler, 394 U.S. 526 (1969) 9

Page

Mahan v. Howell, 410 U.S. 315 (1973) 11, 14, 23, 38, 39, 41, 42, 43
Reynolds v. Sims, 377 U.S. 533 (1964) 41
Swann v. Adams, 385 U.S. 440 (1967) 4
United Jewish Organization of Williamsburgh, Inc. v. Carey, No. 75-104, certiorari granted, November 11, 1975, argued October 6, 1976 16
Village of Arlington Heights v. Metropolitan Housing Development Corporation, 45 U.S.L.W. 4073 (U.S. Jan. 11, 1977) 51
Washington v. Davis, 426 U.S. 229 (1976) 51, 52
Wells v. Rockefeller, 394 U.S. 542 (1969) 9
Whitcomb v. Chavis, 403 U.S. 124 (1971)..43, 44, 45, 47, 51
White v. Regester, 412 U.S. 755 (1973)....43, 44, 46, 48, 51
Wright v. Rockefeller, 376 U.S. 52 (1964) 52

Constitution, Statutes:

United States Constitution:
Fourteenth Amendment 3, 42, 51
Fifteenth Amendment 3, 6
Section 5 of the Voting Rights Act of 1965, 79 Stat. 439, as amended, 42 U.S.C. section 1973c.....13, 14, 15, 28, 32, 38, 50
28 U.S.C. section 1361 15

Miscellaneous:

Mississippi Constitution of 1890
Section 89 33
Section 170 33
Section 254 35
Section 255 35
Hutchinson's Mississippi Code of 1848 35
Article XI, Mississippi Constitution of 1869, Revised Code of 1871 35
Mississippi Legislative Apportionment Act of May 12, 1937 34

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-777

PEGGY J. CONNOR, et al., *Appellants*

v.

CLIFF FINCH, Governor of Mississippi, et al.

No. 76-933

CLIFF FINCH, Governor of Mississippi, et al., *Appellants*

v.

PEGGY J. CONNOR, et al., and the UNITED STATES OF AMERICA

No. 76-934

UNITED STATES OF AMERICA, *Appellant*

v.

CLIFF FINCH, Governor of Mississippi, et al.

No. 76-935

PEGGY J. CONNOR, et al., *Appellant*

v.

CLIFF FINCH, Governor of Mississippi, et al.

On Appeal from the United States District Court for the Southern District of Mississippi (Three-Judge Court)

BRIEF FOR THE STATE PARTIES

OPINIONS BELOW

The district court's opinions of August 24, 1976 (App. Vol. III, 94), and September 8, 1976 (App. Vol. III, 117), are reported at 419 F. Supp. 1072 and 1089, respectively. The district court's opinion of November 12, 1976 (App. Vol. III, 220), is reported at 422 F. Supp. 1014.

JURISDICTION

The judgment of the district court was entered on November 18, 1976 (App. Vol. III, 232), and was amended by order entered on December 21, 1976 (App. Vol. III, 279). On December 8, 1976, this Court noted probable jurisdiction regarding plaintiffs' appeal from the district court judgment denying injunctive relief (App. Vol. III, 259). In noting probable jurisdiction this Court ordered that any and all other appeals from the judgment be taken by filing notices of appeal and be perfected by filing statements as to jurisdiction by January 5, 1977. The jurisdictional statements of plaintiffs, defendants and intervenor were filed on January 5, 1977, and probable jurisdiction was noted to all three jurisdictional statements on January 17, 1977. The jurisdiction of this Court rests on 28 U.S.C. § 1253.

QUESTIONS PRESENTED

1. Whether the district court abused its discretion by refusing to utilize multi-member districts in fashioning its plan, and thus having to abandon the State policy of preserving the integrity of the county boundaries.

2. Whether the district court, having found that the 1975 elections were held pursuant to a constitutionally proper plan, erred in ordering special elections after formulating a new reapportionment plan.

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourteenth Amendment provides in part:

> "Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The Fifteenth Amendment provides:

> "Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude."

STATEMENT

A. History of the Litigation

1. Reapportionment Proceedings Prior to 1971

Judicial review of the apportionment of the Mississippi Legislative districts began in 1965 [1] when plaintiffs [2] sought the reapportionment of the Legislature

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[1] The plans under which the 1967 elections were held were not appealed, thus the litigation began anew in 1971.

[2] This brief will refer to the parties as they were in the district court. Accordingly, Peggy J. Connor, et al. are plaintiffs; United

based on the principle of one person-one vote. *Connor* v. *Johnson,* 256 F. Supp. 962 (S.D. Miss. 1966). Plaintiffs challenged the apportionment of seats in the Senate and the House of Representatives.[3] Under the Mississippi Constitution, as it then existed, each county had one representative with the remaining forty representatives divided among the more populous counties on a population basis. Senatorial districts were divided so that the more populous counties were each allotted one senator and the less populous counties combined for the purpose of electing one senator. *Id.* at 965. Since there were large population variances among the legislative districts, the three-judge district court found the apportionment provisions of the Mississippi Constitution and statutes to be unconstitutional as violating the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. *Id.* at 967.

After the legislative apportionment was held unconstitutional, a special session of the Legislature was convened to reapportion the legislative districts. A new reapportionment plan was passed by the Legislature and approved by the Governor on December 1, 1966. Under this plan there remained a number of large variations among the legislative districts.[4] While the validity of this plan was being considered, *Swann* v. *Adams,* 385 U.S. 440 (1967), was decided by this Court. The district court held that based on *Swann* the reapportionment plan was fatally defective unless the variations could be explained on the basis of rational State policy. *Connor* v. *Johnson,* 265 F. Supp. 492, 493-494 (S.D. Miss. 1967). "Since the Mississippi Legislature keeps no stenographic report of its debates and requires no formal committee reports other than recommendations as to passage or rejection, it was impossible for the Attorney General to file such an explanation." *Id.* at 494. Therefore, the district court held the reapportionment plan to be unconstitutional and proceeded to reapportion the legislative districts based on the principle of one person-one vote. The court noted that it had not:

> . . . consulted or considered any population figures in any county or district as to the race of the inhabitants thereof, but it [had] been the deliberate purpose [of the court] . . . that this reapportionment shall . . . be wholly devoid of any racial consideration whatsoever. *Id.* at 498-499.

The district court expressly retained jurisdiction to review any reapportionment plan that the State Legislature might enact based upon the 1960 or 1970 United States census. *Connor* v. *Johnson, supra,* 265 F. Supp. at 499. No appeal was taken from this decision and the 1967 legislative elections were held pursuant to the district court plan.

2. Reapportionment History and Proceedings Since 1971

After the completion of the 1970 census, the State Legislature enacted a new reapportionment plan to be used in the 1971 elections. The plan was submitted to the district court pursuant to its retained jurisdiction. Although the district court found that the Legislature

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States of America is intervenor; and Cliff Finch, Governor of Mississippi, et al. are defendants.

[3] Mississippi is divided into 82 counties. There are 122 representatives and 52 senators.

[4] Variations in excess of 20 percent were common with a number of variations exceeding 30 percent. *Connor* v. *Johnson,* 265 F. Supp. 492, 493 (S.D. Miss. 1967).

had "not acted capriciously or arbitrarily or oppressively in its efforts to reapportion itself," *Connor* v. *Johnson,* 330 F.Supp. 506, 519 (S.D. Miss. 1971), the district court nevertheless invalidated the plan for containing impermissible variances.[5] *Id.* at 508.

Because of the impending legislative elections, the district court proceeded to devise a reapportionment plan for the 1971 elections. The district court held its action was "for the purpose of complying with the one man-one vote requirements of the United States Constitution involving no racial discrimination in the exercise of the franchise under the Fifteenth Amendment." *Connor* v. *Johnson, supra,* 330 F.Supp. at 519. Recognizing the integrity of county boundaries, the district court created multi-member districts, rather than fractionalize county lines. *Id.* at 518. The three largest counties, Hinds, Harrison and Jackson, respectively elected twelve, seven and six [6] representatives at-large. Addressing itself to these three counties, the district court stated:

> When, however, a county, within its own borders, elects four or more representatives it would be ideal if it could be divided into districts, for the election of one member to the district. *Id.* at 519.

Nonetheless, the district court declined to divide Hinds, Harrison and Jackson Counties into districts finding:

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[5] The district court cited variances as large as 25 percent. It noted that no rational basis was offered for the variances. *Connor* v. *Johnson, supra,* 330 F.Supp. at 508.

[6] Jackson County was entitled to five representatives by itself. George County was combined with Jackson County to elect six representatives at-large.

> [I]t is a matter of sheer impossibility to obtain dependable data, population figures, boundary locations, etc. so as [to] fairly and correctly divide these counties into districts for the election of single members of the Senate or the House in time for the elections of 1971. *Id.* at 519.

The district court stated that it intended to appoint a special master to determine the feasibility of dividing Hinds, Harrison and Jackson Counties into districts of substantially equal numbers in population for the 1975 and 1979 elections. The district court therefore retained jurisdiction over those three counties. The reapportionment plan *"as to all other Counties* [*was*] *final* and subject to no further review" by the district court. *Connor* v. *Johnson, supra,* 330 F.Supp. at 519 (emphasis in original).

Plaintiffs motioned this Court to stay the district court's order and extend the deadline for filing notices of candidacy until single-member districts were created in Hinds County. In their motion, plaintiffs stated to this Court that they were able to formulate four single-member district plans for Hinds County in the space of three days. *Connor* v. *Johnson,* 402 U.S. 690, 692 (1971). This Court held "that when district courts are forced to fashion apportionment plans, single-member districts are preferable to large multi-member districts as a general matter." *Id.* at 692. In view of "the dispatch with which the [plaintiffs] devised suggested plans" and the apparent availability of census information, this Court granted the motion for stay until June 14. The district court was instructed "absent insurmountable difficulties, to devise and put into effect a single-member district plan for Hinds County" by June 14, 1971. *Id.*

Within forty-eight hours of this Court's order, the district court held a hearing for the purpose of complying with the order. *Connor* v. *Johnson,* 330 F.Supp. 521, 522 (S.D. Miss. 1971). At the hearing, "plaintiffs readily conceded that the plan originally submitted to [the district court] by plaintiffs, and later filed with the Supreme Court, was based on an erroneous precinct map." *Id.* at 522.

The district court on June 8, 1971, appointed William D. Neal as Special Master to propose by June 14 "a valid plan, if such be possible, for the division of Hinds County as directed by the Supreme Court." *Connor* v. *Johnson, supra,* 330 F.Supp. at 524. The Special Master in examining available data found "that the census figures available for the accomplishment of the task were limited to figures tabulated by 'census enumeration districts' and that these districts were rarely coterminous with individual precinct lines."[7] *Id.* at 527. Regarding plaintiffs' proposals, the Special Master concluded that they were "unusable for the election of Representatives and Senators. The proposals were found to have so many basic defects" that the Special Master recommended "that the plans be rejected in their entirety." *Id.* at 526. The Special Master recommended that the 1971 election of senators and representatives from Hinds County be conducted in the manner directed by the district court in *Connor* v. *Johnson, supra,* 330 F.Supp. 506. *Id.* at 528.

After making a number of findings of fact, the district court concluded that it was "confronted with insurmountable difficulties against the division of Hinds

[7] The report of the Special Master is Exhibit "B" of the district court's opinion, *Connor* v. *Johnson,* 330 F.Supp. 521 (S.D. Miss. 1971) and may be found at pages 524-532.

County" into single-member districts for the 1971 elections. *Connor* v. *Johnson, supra,* 330 F.Supp. at 523. Plaintiffs sought a further stay which this Court denied on June 21, 1971. *Connor* v. *Johnson,* 403 U.S. 928 (1971).

After the 1971 elections were held, plaintiffs appealed to this Court challenging the constitutionality of the district court's plan, contending that impermissibly large variances required the plan to be voided, a new plan instituted, and new elections held. *Connor* v. *Williams,* 404 U.S. 549, 550 (1972). In alleging that the variances invalidated the district court's plan, plaintiffs relied on *Kirkpatrick* v. *Preisler,* 394 U.S. 526 (1969) and *Wells* v. *Rockefeller,* 394 U.S. 542 (1969). This Court held that those decisions did not "squarely control" the appeal since they concerned congressional apportionment, rather than state legislative apportionment. *Connor* v. *Williams, supra,* 404 U.S. at 550.

This Court declined to disturb the validity of the 1971 elections and withheld a determination as to the prospective validity of the district court plan for the 1975 elections. It noted that Hinds, Harrison and Jackson Counties' multi-member districts were temporary and that the district court had retained jurisdiction over those three counties to determine whether they may feasibly be divided into districts of substantially equal numbers in population for the elections of 1975 and 1979. Pending completion of those proceedings, this Court deemed it inappropriate to give further consideration to the case. *Connor* v. *Williams, supra,* 404 U.S. at 551.[8] This Court noted that in the meanwhile

[8] The district court's judgment was vacated so that when a final judgment was subsequently entered, plaintiffs' right to appeal would be preserved. *Connor* v. *Williams, supra,* 404 U.S. at 552.

the State Legislature might adopt a reapportionment plan which would make it unnecessary for the district court to develop a plan. *Id.* at 552, fn. 4.

Responding to this Court's decision in *Connor* v. *Williams, supra,* 404 U.S. 549, the Mississippi Legislature established a Joint Legislative Reapportionment Study Committee which was authorized to formulate guidelines and make proposals for reapportionment. The committee met during the summer and fall of 1972, and heard testimony from a variety of witnesses including the Special Master, William D. Neal, and representatives of the plaintiffs and defendants. The committee reported to the Legislature in January, 1973 (Supp. App. 12a-13a).

On January 3, 1973, plaintiffs motioned the district court to accept the resignation of the Special Master, William D. Neal, and appoint a new Special Master "to proceed with the construction of single-member districts for Hinds, Harrison and Jackson Counties" (Jurisd. State. No. 76-933, App. 83a). The district court on January 4, 1973, issued an Order for Deferment referring to the State Legislature the matters contained in plaintiffs' motion relating to Hinds, Harrison and Jackson Counties. The Legislature was given until February 10, 1973, to pass upon the legislative questions. Plaintiffs were directed to contact the proper officials of the Mississippi Legislature to make known their contentions, data and information (Jurisd. State. No. 76-933, App. 85a). Plaintiffs thereafter presented their plans to officials of the Mississippi Legislature.

The Legislature adopted new reapportionment plans and on February 9, 1973, the Governor approved House reapportionment plan, H.B. 446, and Senate reapportionment plan, S.B. 1701, Miss. Legis., 1973 Reg. Sess. These plans established within Hinds, Harrison and Jackson Counties single-member districts, small multi-member districts, and small floterial districts. The plans retained for the remaining counties in the State the legislative districts established by the district court in its 1971 plan. These reapportionment plans were submitted for approval to the district court on February 9, 1973 (App. Vol. I, 15). Plaintiffs filed objections to the legislative plans, H.B. 446 and S.B. 1701, on March 14, 1973 (App. Vol. I, 15).

Two weeks after the Governor had approved H.B. 446 and S.B. 1701, this Court decided *Mahan* v. *Howell,* 410 U.S. 315 (1973). That case held, in part, that constructing legislative districts to maintain the integrity of political boundaries was a rational basis for permitting certain population variances. The Mississippi Legislature's reaction to that decision was a belief that H.B. 446 and S.B. 1701 went further than was required (Supp. App. 14a). New reapportionment legislation, H.B. 1389 and S.B. 2452, Miss. Legis., 1973 Reg. Sess., was enacted and approved by the Governor on April 6, 1973. These enactments, which readopted for Hinds, Harrison and Jackson Counties the plan initially formulated by the district court in 1971, were submitted to the district court on April 12, 1973 (App. Vol. I, 16). Plaintiffs filed objections to H.B. 1389 and S.B. 2452 on April 19, 1973 (App. Vol. I, 17).

On April 17, 1973, plaintiffs filed in the district court a motion for continuance so that they could prepare and submit an alternative single-member district plan for the entire State, not just Hinds, Harrison and Jackson Counties (App. Vol. I, 17). On April 26, 1974, plaintiffs motioned for leave to file a supplemental com-

plaint challenging the entire State reapportionment plan (App. Vol. I, 17). Plaintiffs submitted with the motion an alternative reapportionment plan. The district court entered an order on May 10, 1974, denying plaintiffs' motion for leave to file a supplemental complaint (App. Vol. I, 17).

The district court held a hearing on February 7, 1975, to consider the constitutionality of the 1973 reapportionment legislation, H.B. 1389 and S.B. 2452. After the February 7 hearing, it came to the district court's attention that the Legislature had initiated another effort to reapportion the legislative districts. "Heeding the teachings of *Meier*,[9] [the district court] delayed a decision on the 1973 Acts to see if they were to be replaced by a 1975 enactment." *Connor* v. *Waller*, 396 F.Supp. 1308, 1311 (S.D. Miss. 1975).

The Legislature did enact reapportionment bills, H.B. 1290 and S.B. 2976, Miss. Legis., 1975 Reg. Sess., which were approved by the Governor on April 7 and 8, 1975. Section 3 of both bills directed the Mississippi Attorney General to submit the bills to the district court pursuant to its retained jurisdiction over the subject matter for a determination of the constitutionality of the bills.

The district court dismissed on April 10, 1975, all prior proceedings without prejudice since it believed the 1975 legislation mooted the prior proceedings.[10]

[9] The reference is to *Chapman* v. *Meier*, 420 U.S. 1 (1975), decided by this Court two weeks before the February 7 hearing. That decision reiterated the principle that "reapportionment is primarily the duty and responsibility of the State through its Legislature or other body, rather than of a federal court". *Id.* at 27.

[10] In a subsequent order, the district court vacated this dismissal.

Connor v. *Waller, supra*, 396 F.Supp. at 1311. Plaintiffs were directed to file amended complaints addressed to the 1975 reapportionment Act. Plaintiffs filed an amended complaint and a hearing was held on May 7, 1975. The district court issued its opinion on May 19, 1975, approving the reapportionment plan.[11] *Id.*

In approving the reapportionment plan the district court made the following findings of fact: the preservation of the integrity of county lines has been a policy of Mississippi since it became a state in 1817; the State Legislature acted in good faith in reapportioning and attempted to comply with the constitutional requirements; the plan complies with the constitutional requirements; the plan complies with as nearly as practicable the standards of the one person-one vote rule as enunciated by the Supreme Court; any variances from the population norm were reasonable, unavoidable, and constitutionally justifiable; the reapportionment plan will not deprive any person of fair and effective representation; and the plan does not unconstitutionally minimize or cancel out black voting strength for the election of the Mississippi Legislature. *Connor* v. *Waller, supra*, 396 F.Supp. at 1321, 1332.

On June 5, 1975, this Court reversed the district court, holding that the legislative enactments were required to be submitted pursuant to § 5 of the Voting Rights Act of 1965, 79 Stat. 439, *as amended*, 42 U.S.C. § 1973c. *Connor* v. *Waller*, 421 U.S. 656 (1975). Since the Acts would not be effective as laws until cleared pursuant to § 5, the district court was held to have erred

[11] Jurisdiction was retained over Harrison County's apportionment plan for the election of representatives pending disposition of a related proceeding. *Connor* v. *Waller, supra*, 396 F.Supp. at 1317-1318.

in deciding the constitutional challenge to the Acts based upon claims of racial discrimination.

The reversal was without prejudice to the district court's authority to require, if appropriate, the holding of the 1975 legislative elections pursuant to a court-ordered plan that complied with this Court's decisions in *Chapman* v. *Meier,* 420 U.S. 1 (1975); *Mahan* v. *Howell,* 410 U.S. 315 (1973); and *Connor* v. *Williams,* 404 U.S. 549 (1972). *Connor* v. *Waller, supra,* 421 U.S. at 656.

On June 9, 1975,[12] Mississippi submitted to the United States Attorney General the 1975 legislative reapportionment Acts in compliance with § 5 of the Voting Rights Act. On June 10, 1975, the Attorney General objected to the Acts [13] on the ground that Mississippi had failed to show that the Acts did not have the purpose and would not have the effect of denying or abridging the right to vote on account of race.

On June 11, 1975, the United States motioned to intervene as a party plaintiff, which motion was granted by the district court (App. Vol. I, 22). On June 20, 1975, the district court held a hearing to consider plaintiffs' motion for injunctive relief [14] and defendants' petition for a writ of mandamus.[15] Since the 1975 legislative reapportionment Acts had not become effective as laws, the district court entered an order on June 20, 1975, vacating its previous order of April 10, 1975, which had dismissed all prior proceedings without prejudice (App. Vol. I, 23).

The district court ordered on June 25, 1975, the intervenor to file memoranda setting forth facts of the record demonstrating unconstitutional dilution of black voting strength as asserted by the intervenor. Plaintiffs were permitted, if they desired, to file similar memoranda (App. Vol. II, 179). The district court further stated that it intended, where necessary, to alter any district to remedy any unconstitutional dilution of black voting strength. The district court advised the parties that it proposed to formulate a temporary plan for the 1975 legislative elections only, and that a permanent plan would be formulated at a later date for the 1979 elections. The district court stated that special elections may be ordered after the formulation of a permanent plan "where required by law, equity, or the Constitution of the United States" (App. Vol. II, 180).

By orders dated June 25, July 8 and July 11, 1975, the district court formulated the temporary reapportionment plan under which the 1975 elections were held

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[12] On that same day, the plaintiffs motioned the district court for injunctive relief (App. Vol. I, 22). In that motion, plaintiffs stated that the 1975 legislative plans would be objected to by the United States Attorney General.

[13] As this Court has recognized, the "judgment that the Attorney General must make [under § 5] is a difficult and complex one." *Georgia* v. *United States,* 411 U.S. 526, 540 (1973). However, in the present case the Attorney General objected to the reapportionment plans one day after they had been submitted.

[14] Plaintiffs sought to enjoin defendants from using the 1971 court-ordered plan as the basis for the legislative districts in the 1975 elections.

[15] Defendants petitioned for writ of mandamus pursuant to 28 U.S.C. § 1361 to direct the United States Attorney General to withdraw his objections to the 1975 legislative reapportionment Acts (Supp. App. 50a). The basis for the petition was the policy of the Attorney General in exercising his § 5 administrative review authority to defer to judicial determination regarding racial discrimination of a state reapportionment plan (Supp. App. 50a). This policy was discussed in *Georgia* v. *United States,* 411 U.S. 526, 534, fn. 6. The district court never ruled on the petition for writ of mandamus.

(App. Vol. II, 178, 183, 207). In its July 11 order, the district court instructed the parties to file within ninety days plans for the permanent reapportionment of the Legislature (App. Vol. II, 237).[16]

Plaintiffs on July 21, 1975 and intervenor on July 24, 1975, filed motions requesting the district court to establish a deadline for the completion of a permanent plan and to establish a definite schedule for special elections (App. Vol. II, 239, 252). On August 1, 1975, the district court entered an order declining to set specific dates, but reiterated its determination to have a permanent plan formulated by February 1, 1976, and to require that any necessary special elections be held in conjunction with the 1976 Presidential elections (App. Vol. II, 254). However, on January 29, 1976. the district court deferred further hearings and decision on a permanent plan pending the resolution of three cases before this Court (App. Vol. III, 79).[17]

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[16] The parties were instructed to file three types of reapportionment plans: (1) a plan that provides for the minimum practicable deviations from population norms without fracturing county boundaries; (2) a plan which provides for the minimum fracturing of county boundaries, in which no county shall be divided more than once, and no more than two fractured counties shall be placed in the same district; and (3) any plan of a party's own composition which it feels is consistent with the law (App. Vol. II, 237). Pursuant to the order, defendants submitted their plans on October 9, 1975 (App. Vol. I, 27); plaintiffs submitted their plans on October 15, 1975 (App. Vol. I, 28); and intervenor submitted its plans on October 31, 1975 (App. Vol. I, 28).

[17] The three cases are *United Jewish Organization of Williamsburgh, Inc.* v. *Carey*, No. 75-104, certiorari granted, November 11, 1975, argued October 6, 1976; *Beer* v. *United States*, 425 U.S. 130 (1976); and *East Carroll Parish School Board* v. *Marshall*, 424 U.S. 636 (1976).

Plaintiffs motioned this Court for leave to file a petition for a writ of mandamus. This Court granted the motion and continued consideration of the petition until June 17, 1976, to enable the district court to hold an immediate hearing, formulate a permanent reapportionment plan for the 1979 elections, and to order any special elections if necessary. *Connor* v. *Coleman*, 425 U.S. 675 (1976).

The district court held a hearing on June 15, 1976. It issued an opinion on August 24, 1976 (App. Vol. III, 94) discussing the practical aspects of formulating a reapportionment plan, the means of accomplishing its task, and the guidelines it followed in formulating a plan. Among its guidelines were: a county with a large enough population for one senator or representative would have one complete district within the county boundaries; except where a county is divided into districts within its own borders, no county would be split into more than two segments; there would be no minimization or cancellation of black voting strength; population variances would be as near *de minimis* as possible; and the 1970 U.S. Census Bureau figures would be used as the basis for reapportionment (App. Vol. III, 101). The August 24 opinion further decreed legislative districts for the Senate (App. Vol. III, 102-107). The decree directed the parties to stipulate in which senatorial districts they believed special elections would be mandated by the Constitution of the United States (App. Vol. III, 108). Plaintiffs requested special elections in thirteen senatorial districts and intervenor requested special elections in eight senatorial districts (App. Vol. III, 139, 142, 171-172). On September 8, 1976, the district court issued its opinion decreeing legislative districts for the State House of Representa-

tives (App. Vol. III, 117). The parties were directed in that opinion to file a list of districts for the election of representatives in which special elections should be held (App. Vol. III, 136). Plaintiffs requested special elections in forty-one house districts and intervenor requested special elections in twenty-seven house districts (App. Vol. III, 146, 169). Additionally, the plaintiffs objected to the entire senate plan and requested alterations in thirteen house districts (App. Vol. III, 160). The intervenor objected to eleven senate districts and thirty-four house districts (App. Vol. III, 206).

On November 12, 1976, the district court issued an opinion and order modifying its previously ordered plan in response to objections filed by plaintiffs and intervenor (App. Vol. III, 220). Eleven house districts were modified to improve upon contiguity and population. Special elections were ordered in two newly established districts having black population majority which previously had white population majority (i.e. House Districts 79 and 97; App. Vol. III, 227, 228). The district court stayed setting dates for the two special elections until time for an appeal had expired or until this Court had decided an appeal on the merits (App. Vol. III, 230). Final judgment was entered by the district court on November 18, 1976 (App. Vol. III, 232). Plaintiff motioned on November 29, 1976 to alter or amend the judgment (App. Vol. III, 250). In response to plaintiffs' objections, the district court amended its previous judgments by further modifying two senate districts and nine house districts (App. Vol. III, 279).

After the district court's November 18, 1976 judgment, plaintiffs appealed, No. 76-777, directly to this

Court seeking: (a) to vacate the district court's stay of the two special elections; (b) an order directing twenty-two additional special elections in the Mississippi House of Representatives; (c) to enjoin the convening of the Mississippi legislature until the special elections are certified; or in the alternative (d) to expedite a limited appeal on the merits. This Court issued an order on December 8, 1976, treating plaintiffs' application as an expedited appeal from the judgment denying injunctive relief (App. Vol. III, 259). Probable jurisdiction was noted and it was "further ordered that any and all other appeals from the above judgment be taken by filing notices of appeal and perfected pursuant to the Rules of the Court by filing statements as to jurisdiction on or before the close of business Wednesday, January 5, 1977" (App. Vol. III, 259). Defendants, intervenor and plaintiffs each filed jurisdictional statements, No. 76-933, No. 76-934, and No. 76-935, respectively, on January 5, 1977. Probable jurisdiction was noted by this Court on January 17, 1977, as to all three jurisdictional statements and they were consolidated with No. 76-777 (App. Vol. III, 286).

B. Reapportionment Plans Since 1971

Although judicial involvement in the reapportionment of the Mississippi legislative districts began in 1965, the reapportionment dispute before this Court has as its origin the 1971 court-ordered plan.[18] The 1967 court-ordered plan under which the 1967 State legislative elections were held was not challenged by

[18] Thus, plaintiffs' contention that "this case has dragged on through three four-year state legislative terms and is now into a fourth without providing plaintiffs the full and effective relief to which they are entitled" (Jurisd. State. 76-935, 4) is an overstatement.

any of the parties. The permanent reapportionment plan developed by the district court is a result of its perception as to what it was mandated to do by this Court as discussed in *Connor* v. *Johnson,* 402 U.S. 690; *Connor* v. *Williams,* 404 U.S. 549; *Connor* v. *Waller,* 421 U.S. 656; and *Connor* v. *Coleman,* 425 U.S. 675. It is important to note that since the 1971 court-ordered plan, none of the court-ordered plans nor any of the legislative enacted plans have been found to be unconstitutional. The 1975 legislative reapportionment Acts were objected to by the Attorney General one day after the State had submitted the Acts, not because he had found them unconstitutional, but because "Mississippi had failed to show that [the Acts] did not have the purpose and would not have the effect of denying or abridging the right to vote on account of race" (Jurisd. State. 76-934, 8).

The court-ordered and legislative reapportionment plans since 1971 have been based on the United States Census of 1970.[19] According to the Census of 1970, Mississippi has a population of 2,216,912. *Connor* v. *Johnson, supra,* 330 F.Supp. at 508. As there are 52 senate seats, the "norm" (absolute equivalent) for each seat is 42,633 people. For the 122 house seats the "norm" is 18,171 people. Thus, a variance of 1 percent in the population norm for the election of a senator amounts to only 426 persons, while a similar variance for the election of a representative amounts to only 181 persons.

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[19] Although the U.S. Census Bureau made official population estimates for 1973, those figures were found to be unusable since they did not include beats or voting precincts (App. Vol. III, 101, 102). In Mississippi, each county is divided into five beats, also known as supervisor districts, which are the units of county government.

1. The 1971 Court-Ordered Plan.

The 1971 court-ordered plan created thirty-three senate districts and forty-six house districts. *Connor* v. *Johnson,* 330 F.Supp. at 509-518. Under the plan no county or beat was fractionalized, although counties were combined to form a single district. Nineteen of the thirty-three senate districts were single-member districts. Of the remaining fourteen multi-member districts, eleven districts elected two senators, two districts elected three senators, and one district elected five senators. District 29 had the largest under-representation, with a variance of 9.6 percent. *Id.* at 511. District 19 had the greatest over-representation, with a variance of 9.3 percent. *Id.* at 510. Thus, the total maximum variance for senate districts was 18.9 percent.

The forty-six house districts were as follows: thirteen were single-member; fifteen districts elected two representatives;[20] eight districts elected three representatives;[21] five districts elected four representatives;[22] two districts elected five representatives;[23] one district elected six representatives; one district elected

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[20] Districts 8, 9, 26, 32 and 43 had residency requirements which required a representative to reside in a specific county. *Connor* v. *Johnson, supra,* 330 F.Supp. at 517, 520.

[21] Districts 1, 25 and 35 were floterial districts. *Connor* v. *Johnson, supra,* 330 F.Supp. at 516-518. In floterial districts some representatives are elected by smaller sub-districts and the remaining representatives are elected from the district at-large.

[22] Districts 11, 24 and 28 were floterial districts, with District 24 having an additional residency requirement for one seat. *Connor* v. *Johnson, supra,* 330 F.Supp. at 516-518.

[23] Both of these districts, 4 and 23, were floterial districts, with District 23 having a residency requirement for one seat. *Connor* v. *Johnson, supra,* 330 F.Supp. at 516-517, 520.

seven representatives; and one district elected twelve representatives.

The three largest counties in Mississippi—Hinds, Harrison and Jackson—comprise one-fifth of the State's population. Under the 1971 plan Hinds County elected five senators and twelve representatives at-large; Harrison County elected three senators and seven representatives at-large; and Jackson County elected two senators and six representatives[24] at-large. The district court in its opinion stated that its reapportionment plan was final as to all counties. *Connor* v. *Johnson, supra,* 330 F.Supp. at 519.

In granting plaintiffs' motion to stay the filing deadline in Hinds County for candidacy in the 1971 elections, this Court stated:

> [W]hen district courts are forced to fashion apportionment plans, single-member districts are preferable to large multi-member districts as a general matter . . . The District Court is instructed, absent insurmountable difficulties, to devise and put into effect a single-member district plan for Hinds County by [June 14, 1971]. . . . *Connor* v. *Johnson, supra,* 402 U.S. at 692.

The district court found "insurmountable difficulties," *Connor* v. *Johnson, supra,* 330 F.Supp. at 523, and accordingly the 1971 elections were held pursuant to its original plan.

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[24] George County was combined with Jackson County in electing representatives. *Connor* v. *Johnson, supra,* 330 F. Supp. at 516.

2. The 1973 Legislative Plan.

On February 9, 1973, the Governor approved H.B. 446 and S.B. 1701, Miss. Legis., 1973 Reg. Sess., which reapportioned the State House of Representatives and Senate districts (App. Vol. I, 15). The plans conformed in all respects with the district court's 1971 plan, except for the representative districts for Hinds, Harrison, Jackson and George Counties, and the senatorial district for Hinds County (Supp. App. 1a-2a).

Hinds County was apportioned so that each beat would elect two representatives (for a total of ten representatives) and two representatives were to be elected from the County at-large. The five senators from Hinds County were to be elected at-large, but it was required that one senator reside in each of the five beats. Each of the beats in Harrison County would elect a representative, and an additional two representatives were to be elected from the County at-large. Each of the beats in Jackson County would elect a representative, with a sixth representative to be elected at-large from Jackson and George Counties. The sixth representative was required to be a resident of George County.

On February 21, 1973, this Court decided *Mahan* v. *Howell, supra,* 410 U.S. 315, which upheld a Virginia reapportionment statute that utilized multi-member districts to maintain political boundaries. Believing that under *Mahan* v. *Howell,* H.B. 446 and S.B. 1701 had gone further than was required by law (Supp. App. 14a), the Mississippi legislature enacted new reapportionment legislation superseding its previous legislation. H.B. 1389 and S.B. 2452, Miss. Legis., 1973 Reg. Sess., approved by the Governor on April 6, 1973, essentially readopted the plan initially formulated by

the district court in 1971. The only difference was that the representatives elected from Hinds, Harrison, Jackson and George Counties were to run in designated posts, and the senators elected from Hinds County were to run in designated posts (Supp. App. 3a-4a).

3. The 1975 Legislative Plan.

In 1975 the Mississippi Legislature once again undertook the task of reapportioning by enacting H.B. 1290 and S.B. 2976, Miss. Legis., 1975 Reg. Sess. These bills were approved by the Governor on April 7 and 8, 1975. Prior to enactment of S.B. 2976, a report of the Senate Committee on Elections entitled "Legislative History and Statement of Intent" was adopted by the Senate. *Connor* v. *Waller, supra,* 396 F.Supp. at 1315. That report discussed the Committee's policies in apportioning the Senate legislative districts and its consideration of alternative apportionment proposals (Supp. App. 15a).

The Committee determined that "the policy of maintaining the integrity of county lines in establishing legislative districts should be continued" (Supp. App. 15a). The Committee recognized its inability to attain mathematical exactness in apportioning and still maintain the integrity of political subdivision lines. Nevertheless, it sought to create legislative districts as nearly as equal as practicable (Supp. App. 18a). Moreover, the Committee stated its attempt to reduce multi-member districts as much as possible, yet still give effect to the one person-one vote requirement of the Constitution (Supp. App. 16a).

Mayor Charles Evers of Fayette, Mississippi, testified before the Committee and submitted a plan for re-

apportionment (Supp. App. 18a). Mayor Evers concurred with the policy of preserving the integrity of county lines (Supp. App. 16a), but his plan contained large population variances among the districts including a total maximum variance of 47 percent (Supp. App. 19a). The Committee felt that in view of this Court's decisions, Mayor Evers' plan was unconstitutional, and therefore rejected it (Supp. App. 19a).

The Committee also considered a proposal for reapportionment presented by the plaintiffs to the district court (Supp. App. 19a). While admittedly achieving a "greater mathematical exactness" than did the Committee's plan, the Committee concluded that plaintiffs' proposal was "impracticable and unworkable" (Supp. App. 19). Forty of the fifty-two districts in plaintiffs' proposal crossed county lines, and forty-six of the new districts crossed beat lines. Only four districts in plaintiffs' plan were "composed of counties which are not divided or [were] composed of a subdivision of a county" (Supp. App. 19a-20a).

Plaintiffs' proposal utilized census enumeration districts as the basic unit for determining the population of a legislative district (Supp. App. 20a). Use of enumeration districts would require the establishment of new voting precincts along the enumeration district lines, a power traditionally that of the local government (*Id.*). The plaintiffs' plan was ultimately rejected by the Committee because:

> [T]he committee did not want to abrogate the historical state policy of creating Senate districts coinciding with county lines, because the committee did not want to abridge the traditional power of local government to establish voting precincts and because the committee did not want to create

unnecessary confusion and impose an unwarranted hardship upon voters and election officials by structuring voting precincts on enumeration districts which are subject to frequent change (Supp. App. 20a-21a).

The House Committee on Apportionment and Elections issued a report to accompany H.R. 1290 (Supp. App. 23a). That report stated policy considerations similar to those of the Senate Committee's policy considerations.

Both the Senate and the House bills retained the same legislative apportionment as the district court's 1971 plan, with the exception of Hinds, Harrison and Jackson Counties, and George County with regard to the House plan. The Senate plan provided that five, three and two senators would be elected at-large from Hinds, Harrison and Jackson Counties, respectively. The variances from the population norm for each of these counties were: +0.84 percent for Hinds County; +5.2 percent for Harrison County; +3.2 percent for Jackson County (Supp. App. 22a).

The House plan provided for Hinds County that two representatives were to be elected from each of the five beats in the County and two representatives were to be elected by the County at-large (Supp. App. 34a). The maximum population variance in Hinds County under this plan was 1.04 percent. *Connor* v. *Waller, supra,* 396 F.Supp. at 1317. Regarding Harrison and Jackson Counties, the House Committee determined that the devastating effect of Hurricane Camille in August, 1969, resulted in a temporary shift of population within the Counties. As a result, the committee concluded that the 1970 census did not accurately reflect the

population of the individual beats in the County (Supp. App. 35a-36a). Accordingly, Harrison County was to elect seven representatives at-large with the requirement that one representative reside in each of the five beats. Jackson and George Counties were to elect six representatives at-large, with the requirement that one representative was to reside in each of the five beats in Jackson County and one representative was to reside in George County.

For the first time in this litigation epic, racial dilution became a central issue (Supp. App. 75a). The decisions prior to *Connor* v. *Waller, supra,* 396 F.Supp. 1308, had dealt exclusively with the issue of one person-one vote. Under the 1975 legislative reapportionment plan, eight senatorial districts electing twelve senators had a black population majority. Six senatorial districts electing thirteen senators had between 36-50 percent black population. In the House plan, ten districts electing twenty-six representatives had a black population majority, whereas sixteen districts electing forty-six representatives had between 36-50 percent black population. *Id.* at 1326.

After holding a hearing and receiving briefs, the district court held, with the exception of the House plan for Harrison County, that the 1975 legislative reapportionment Acts were not violative of the one person-one vote rule, nor did the Acts unconstitutionaly minimize or cancel out black voting strength. *Connor* v. *Waller, supra,* 396 F.Supp. at 1309. The district court retained jurisdiction over Harrison County pending division in that County of new beats in another case. *Id.* at 1317-1318.

4. The 1975 Court-Ordered Plan.

This Court reversed the district court, holding that the legislative enactments were required to be submitted pursuant to § 5 of the Voting Rights Act. *Connor* v. *Waller,* 421 U.S. 656. The reversal was without prejudice to the district court's authority to require, if appropriate, the holding of the 1975 legislative elections pursuant to a court-ordered plan. *Id.* at 656. The district court, thereafter, by orders dated June 25, July 8 and July 11, 1975 formulated a temporary reapportionment plan for the 1975 elections (App. Vol. II, 178, 183, 207).

In formulating the temporary plan, the district court recited the necessity of utilizing the beat as the smallest identifiable unit in apportioning (App. Vol. II, 194). Since the 1970 census figures were based on enumeration districts, rather than voting precincts as had been the previous practice of the Census Bureau, voting precincts could not be used in formulating an apportionment plan (App. Vol. II, 193).

Reapportionment plans offered by the plaintiffs and intervenor could not be used by the district court because they did not conform to the requirements of Mississippi registration and voting procedures (App. Vol. II, 211). The district court further noted as to plaintiffs' and intervenor's reapportionment plans:

> [T]o a large extent we must say in kindly candor that the objective of these plans, quite clearly, is to *maximize* black voting strength wherever it may be found. These *plans* would fragment the eighty-two counties into several hundreds of small pieces, tacked together in a fashion designed, wherever possible, to establish election districts with black

> majorities (App. Vol. II, 211, emphasis in original).

The district court's reapportionment plan under which the 1975 elections were held contained for the Senate: twenty-seven single-member districts;[25] eleven multi-member districts electing two senators; and one multi-member district electing three senators (App. Vol. II, 227-229). The House districts were apportioned in the following manner: fifty-six single-member districts;[26] twenty-one multi-member districts electing two representatives;[27] four multi-member districts electing three representatives, and three multi-member districts electing four representatives [28] (App. Vol. II, 230-236). In the Senate plan, Hinds County elected five senators from single-member districts, Harrison County elected three senators at-large, and Jackson County elected two senators at-large. In the House plan, Hinds County elected twelve representatives from single-member districts, Harrison County elected five representatives from single-member districts and two representatives at-large, and Jackson County elected five representatives from single-member districts. For the first time in Mississippi history county boundaries were fragmented—Rankin, Madison, Greene and Stone Counties (App. Vol. II, 232-236).

Pursuant to the 1975 court-ordered plan, fourteen senators and thirty representatives were elected from

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[25] District 27B was a floterial district.

[26] Districts 1B, 3B, 11B, 25B and 35B were floterial districts.

[27] Districts 2, 8, 9, 23A, 26, 27, 29 and 32 had residency requirements.

[28] District 24 had a residency requirement.

districts having a black population majority. In addition, thirteen senators and forty-six representatives were elected from districts having a black population of 36-50 percent (App. Vol. II, 226).

5. The 1976 Court-Ordered Plan.

On June 15, 1976, the district court held a hearing to formulate a permanent reapportionment plan to be used for the 1979 elections. That plan was formulated by the district court in a series of orders issued on August 24, 1976 (App. Vol. III, 94), September 8, 1976 (App. Vol. III, 117), November 18, 1976 (App. Vol. III, 232), and December 21, 1976 (App. Vol. III, 279).

That plan contains only single-member districts, and no multi-member districts. As a result, nineteen counties and at least seven beats are fractionalized in the apportionment of the Senate districts, and forty-two counties and at least forty-one beats are fractionalized in the apportionment of the House districts. Hinds, Harrison and Jackson Counties are not fractionalized, but rather subdivided to attain the appropriate number of legislative districts (App. Vol. III, 235-236, 242-243, 246-247). The total maximum variance for the Senate districts is 16.5 percent, while the total maximum variance for the House districts is 19.3 percent.

SUMMARY OF ARGUMENT

Until the recent court-ordered reapportionment plans, the county boundaries in Mississippi had never been fractionalized in legislative districting. Multi-member districts have been a traditional state policy and have been used to preserve the integrity of county boundaries.

The district court acknowledged that the integrity of county boundaries could be maintained by the use of multi-member districts and still comply with the one person-one vote principle. It further found that a reapportionment plan that utilized only single-member districts would require the fractionalization of county boundaries. However, the district court felt compelled by decisions of this Court to fashion a reapportionment plan utilizing single-member districts exclusively. Defendants contend that the district court was clearly in error in abandoning the use of multi-member districts, thus necessitating the fractionalization of county boundaries.

This Court has expressed disapproval of the use of multi-member districts in court-ordered plans where *large* multi-member districts were created; where the court *imposed* multi-member districts on states that previously did not use multi-member districts; and where multi-member districts had the purpose or effect of minimizing or cancelling the voting strength of racial or political elements.

The district court could have, and has in the past, fashioned a reapportionment plan in Mississippi that utilized small multi-member districts and single-member districts. Moreover, the district court has imposed a single-member district plan on a state that has a rational policy for utilizing multi-member districts. Finally, it has never been demonstrated that multi-member districts in Mississippi operate to minimize or cancel the voting strength of any racial or political element.

The district court, when fashioning the reapportionment plan for the 1975 elections, stated that when the

permanent plan for the 1979 elections was formulated, special elections would be held in "those legislative districts where required by law, equity, or the Constitution" (App. Vol. II, 180).

After formulating the permanent plan, the district court held that the 1975 elections comported with all pertinent constitutional standards. However, the district court held that special elections were required in two districts where the permanent plan had resulted in a change of black/white population ratio. In reaching this conclusion, the district court failed to apply the constitutional test of racial dilution. Instead, it applied the Section 5, Voting Rights Act of 1965, test of dilution. Section 5 is not applicable in the present case. Moreover, even under Section 5 standards there is no racial dilution. Section 5 states that there is dilution where there is a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise. The facts do not show any retrogression in the position of the blacks with respect to their effective exercise of the electoral franchise in the two districts where special elections were orderd. Thus, it is improper to require any special elections in the present circumstances.

ARGUMENT

A. THE DISTRICT COURT FRAGMENTED COUNTY BOUNDARIES, CONTRARY TO STATE POLICY, BY REFUSING TO UTILIZE MULTI-MEMBER DISTRICTS IN ITS REAPPORTIONMENT PLAN.

1. As the County Is the Basic Unit of Government in Mississippi, the State Has Always Preserved the Integrity of County Boundaries.

Since the admission of Mississippi into the Union in 1817, the County has been "the sole, inviolate basic unit of state and local government" (App. Vol. II, 187). "All state law in Mississippi—criminal, civil, and administrative—has uniformly rested on that foundation" (Supp. App. 95a-96a). Each county is divided into five supervisors districts, Miss. Const., Sec. 170, also known as beats. The supervisors elected from each of the beats comprise the county governing board.[29] The county governing board exercises executive and judicial functions, including the valuation of property for taxation, the levy of taxes, the expenditure of public funds, the issuance of bonds, and the management of public roads (App. Vol. III, 97).

Section 89 of the Mississippi Constitution providing for local and private legislation, is often used to aid the counties and their subdivisions (App. Vol. II, 189). As the district court has recognized, when a county is fragmented—for example, a beat is taken from one

[29] Since the Mississippi Constitution requires the supervisors to be elected from their respective beats Miss. Const., Sec. 176, a voting precinct must be located entirely within the same beat. Mississippi has maintained for the past seventy-five years a system of permanent voter registration. Once a person registers to vote within the precinct of his residence, he need never register again—except in the rare event of a total re-registration—as long as he continues to reside within the precinct (App. Vol. III, 97).

county and arbitrarily annexed to another county—so as to attain a desired population, the "balkanized" beat may well be deprived of effective representation. *Connor* v. *Johnson, supra,* 330 F.Supp. at 518. A voter from the balkanized area "would *appear* to be voting on an equality, and mathematically this would be so, but his chance of influencing the outcome desired by the great majority living in the adjoining county would be ephemeral." *Id.* (emphasis in original).

As the plaintiffs have conceded (Supp. App. 41a), prior to the district court-ordered plan of 1975, there had never been an instance in the history of Mississippi where a county boundary was fractionalized so as to create a legislative district. Equally important is the history in Mississippi of the use of multi-member and multi-county legislative districts.

The "use of multiple member and multiple county legislative districts in Mississippi does not have its origin in a desire to cancel out or minimize black voting strength." *Connor* v. *Waller, supra,* 396 F.Supp. at 1323. Multi-member districts have been common in Mississippi since before the Civil War. Prior to statehood when Congress passed an act to elect delegates to the Mississippi Constitutional Convention, each of the counties elected a multiple number of delegates (App. Vol. II, 187).

The Mississippi Legislative Apportionment Act of May 12, 1837, created twenty-four multi-member districts for the election of representatives, electing two to four members per district (App. Vol. II, 187). By 1846, the State had twenty-two multi-member districts electing two to four representatives each. Eighteen of the Senate districts were composed of the combination

of two to four counties. Hutchinson's Mississippi Code of 1848, pp. 377-378.

The Mississippi Constitutional Convention of 1868 apportioned legislative districts so that twenty-nine counties elected at-large between two to five representatives. Twenty-three of the twenty-nine Senate districts were comprised of two to six counties. Article XI, Mississippi Constitution of 1869, Revised Code of 1871, p. 665. Under the Mississippi Constitution of 1890, multi-member districts were included for both the House and the Senate. Miss. Const. §§ 254, 255. Legislative reapportionment under the Constitution of 1890 remained in effect until 1963 when the Mississippi Constitution was amended in the wake of *Baker* v. *Carr,* 369 U.S. 186 (1962) (App. Vol. II, 188).

In sum, the county has occupied the central role in Mississippi government throughout the State's history. Accordingly, the integrity of the county boundaries has been preserved, often through the utilization of multi-member districts. In its most recent attempt to devise a reapportionment plan, the Mississippi legislature reaffirmed its desire to maintain the integrity of the county unit (Supp. App. 15a, 23a).

2. The District Court Erred In Refusing To Utilize Multi-Member Districts In Its Reapportionment Plan, And Thus Fragmenting Political Boundaries.

In formulating a permanent reapportionment plan the district court felt compelled to disregard the State's long-standing policy of utilizing multi-member districts to preserve the integrity of political boundaries. Believing that a court-ordered reapportionment plan utilizing multi-member districts would not withstand judicial review, the district court "decided

to divide the State into single-member legislative districts in the hope that this long-running controversy may at last be terminated and the stability of the Mississippi Legislature restored" (App. Vol. III, 98).

This Court's admonishments to lower courts concerning use of multi-member districts has been limited to circumstances where they were used in the absence of any state policy; where they had the purpose or effect of minimizing or canceling out the voting strength of racial or political elements of the voting population; or where large multi-member districts existed. Mississippi has an undisputed long-standing policy of utilizing multi-member districts and it has never been shown that the policy has either the purpose or the effect of minimizing or canceling out the voting strength of racial or political elements. By refusing to utilize multi-member districts, the district court was required to fractionalize county boundaries. This Court has never held Mississippi's use of multi-member districts to be unconstitutional, nor has it ever held that a court-ordered plan could not utilize multi-member districts.

In *Connor* v. *Johnson*, 402 U.S. 690, this Court first addressed the use in Mississippi of multi-member districts. Plaintiffs applied to this Court for a stay of a district court-ordered plan that established Hinds County as a multi-member district electing five senators and twelve representatives at-large. The district court had expressed reluctance over the use of multi-member districts in counties electing four or more senators or representatives, stating that it would be "ideal" if such counties could be divided; but, the district court found it "a matter of sheer impossibility"

to divide such counties into single-member districts in time for the 1971 elections.[30] *Connor* v. *Johnson, supra,* 330 F.Supp. at 519. In granting a stay of the district court plan for Hinds County, this Court stated: "When district courts are forced to fashion apportionment plans, single-member districts are preferable to *large* multi-member districts as a general matter." *Connor* v. *Johnson, supra,* 402 U.S. at 692 (emphasis supplied).

In its order formulating the 1971 reapportionment plan, the district court stated that the plan was temporary as to Hinds, Harrison and Jackson Counties, but *"as to all other Counties* [*was*] *final."* *Connor* v. *Johnson, supra,* 330 F.Supp at 519 (emphasis in original). After the 1971 elections, plaintiffs appealed to this Court challenging the constitutionality of the district court plan. *Connor* v. *Williams,* 404 U.S. 549. This Court found it inappropriate to determine the constitutionality of the plan at that time,

> [b]ecause the District Court had retained jurisdiction over plans for *Hinds, Harrison and Jackson Counties* and had stated its intention to appoint a Special Master in January 1972 to consider the subdivision of *those counties* into single-member districts. . . . *Connor* v. *Coleman,* 425 U.S. 675, 676 (emphasis supplied).

* * *

[30] Only two other districts besides Hinds County in the court plan elected four or more representatives. Harrison County elected seven representatives and Jackson County elected six representatives. No other district elected four or more senators. The court's plan contained 30 other multi-member house districts and 13 other multi-member senate districts. *Supra* at 22. The "ideal" was attained for Hinds, Harrison and Jackson Counties in the 1975 court-ordered plan by subdividing each of those Counties into single-member districts.

> Such proceedings should go forward and be promptly concluded, for, as this Court has emphasized, 'when District Courts are forced to fashion apportionment plans, single-member districts are preferable to large, multi-member districts as a general matter. . . . *Connor* v. *Williams, supra,* 404 U.S. at 551.

After the district court approved the 1975 legislative apportionment plan, *Connor* v. *Waller, supra,* 396 F. Supp. 1308, this Court reversed, holding the legislative enactments were required to be submitted pursuant to section 5 of the Voting Rights Act of 1965. *Connor* v. *Waller,* 421 U.S. 656. The reversal was,

> without prejudice to the authority of the District Court, if it should become appropriate, to entertain a proceeding to require the conduct of the 1965 elections pursuant to a court-ordered reapportionment plan that complies with this Court's decisions in *Mahan* v. *Howell,* 410 U.S. 315 (1973); *Connor* v. *Williams,* 404 U.S. 549 (1972); and *Chapman* v. *Meier,* 420 U.S. 1 (1975).

This Court in *Connor* v. *Coleman,* 425 U.S. 675, directed the district court to enter a final judgment embodying a permanent plan reapportioning the Mississippi Legislature. The district court correctly understood (App. Vol. III, 85) the *Connor* v. *Coleman* decision as requiring it to comply with this Court's decisions in *Mahan* v. *Howell,* 410 U.S. 315, *Connor* v. *Williams,* 404 U.S. 549, and *Chapman* v. *Meier,* 420 U.S. 1.

The *Connor* decisions[31] stand for the proposition that: "When district courts are forced to fashion ap-

[31] *Connor* v. *Johnson,* 402 U.S. 690, *Connor* v. *Williams,* 404 U.S. 549, and *Connor* v. *Waller,* 421 U.S. 656.

portionment plans, single-member districts are preferable to *large* multi-member districts as a general matter." That proposition was made in reference to the large multi-member districts contained in Hinds, Harrison and Jackson Counties. The district court in its initial decision in these proceedings expressed its displeasure with *those* multi-member districts. *Connor* v. *Johnson, supra,* 330 F.Supp. at 519.[32] As to the remaining multi-member districts, the district court held those reapportionment plans to be final. *Id.* The two decisions—*Mahan* v. *Howell* and *Chapman* v. *Meier*—cited by this Court in its *Connor* v. *Waller* opinion approved the use of multi-member districts in certain circumstances.

Chapman v. *Meier, supra,* 420 U.S. 1, presented the issue of the constitutionality of a federal court-ordered reapportionment of the North Dakota Legislature. The court plan created five multi-member senate districts electing one-third of the State senators. Reviewing North Dakota's constitutional and statutory history, this Court found two significant facts:

> The first is that some multimembership on the House side of the Legislative Assembly tradition-

[32] See also, *Mahan* v. *Howell,* 410 U.S. 315. In *Mahan,* the Virginia State Legislature had divided Fairfax County into two five-member districts. The district court had intimated that such action was evidence that the State was not strictly adhering to political subdivision lines. This Court, in rejecting the district court's reasoning stated: "While Fairfax County was divided, it was not fragmented. And had it not been divided, there would have been one ten-member district in Fairfax County, a result that this Court might well have been thought to disfavor as a result of its opinion in *Connor* v. *Johnson,* 402 U.S. 690, 692 (1971). The State can scarcely be condemned for simultaneously attempting to move toward smaller districts and to maintain the integrity of its political subdivision lines." *Mahan* v. *Howell, supra,* 410 U.S. at 327.

ally has existed. This plainly qualifies as established state policy. The second is that, in contrast, multimembership on the Senate side . . . has never existed except as impos l [by a three-judge federal court and a recent legislative act that was immediately nullified by referendum] . . . Multimember senate representation, therefore, obviously does not qualify as established state policy. *Id.* at 14-15, footnote omitted.

Noting its preference for single-member districts in court-ordered plans, *Chapman* v. *Meier, supra,* 420 U.S. at 18, this Court held that in evaluating the use of multimember districts, two standards emerged—one standard for a federal court plan, another standard for a state legislative plan:

> When the plan is court ordered, there *often is no state policy of multimember districting* which might deserve respect or deference. Indeed, if the court is *imposing* multimember districts upon a State which *always has employed single-member districts,* there is special reason to follow the [*Connor* v. *Johnson, supra,* 402 U.S. 690] rule favoring the latter type of districting.
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> * * *
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> Absent particularly pressing features calling for multimember districts, a United States district court should refrain from *imposing* them upon a State. *Id.* at 19 (emphasis supplied).

Since the district court had imposed multimember senatorial districts where previously none had existed, and there had been no suggestion of a legitimate state interest or policy in creating such multi-member districts, the district court was directed to *reinstate* single-member senate districts in North Dakota. *Chapman* v. *Meier, supra,* 420 U.S. at 21.

In Mississippi, multi-member districts have existed for over 150 years for both senatorial and representative districts. This plainly qualifies as established state policy. Unlike the senatorial districting in North Dakota, Mississippi has a state policy of multi-member districting which deserves respect and deference. The district court in the present case has *imposed* single-member districts upon a State which has always employed multi-member districts. Thus in Mississippi there is a special reason *not* to rely exclusively on single-member districts in fashioning a reapportionment plan.

Mahan v. *Howell, supra,* 410 U.S. 315, involved the constitutionality of statutes enacted by the Virginia General Assembly apportioning the State for the purpose of electing members to the Virginia Legislature. The statute apportioning the House provided for a combination of single-member , multimember and floterial districts that contained a maximum percentage variation from the population norm of 16.4 percent. *Id.* at 318-319. The district court concluded that the 16.4 percent variance was unconstitutional, even though the basis of the variance was the State Legislature's desire to maintain the integrity of traditional political boundaries. *Id.* at 319.

In reversing the district court on that issue, this Court held that the constitutionality of a state legislative reapportionment plan was not to be judged by the more stringent standards applicable to congressional reapportionment. *Mahan* v. *Howell, supra,* 410 U.S. at 324. Reaffirming its holding in *Reynolds* v. *Sims,* 377 U.S. 533 (1964), this Court articulated the standard for state legislative reapportionment:

> '[T]he Equal Protection Clause requires that a State make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable' . . . We likewise reaffirm its conclusion that '[s]o long as the divergences from a strict population standard are based on legitimate considerations incident to the effectuation of a rational state policy, some deviations from the equal-population principle are constitutionally permissible. . . .' *Mahan* v. *Howell, supra,* 410 U.S. at 324-325.
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>
> The policy of maintaining the integrity of political subdivision lines in the process of reapportioning a state legislature, the policy consistently advanced by Virginia as a justification for disparities in population among districts that elect members to the House of Delegates, is a rational one. *Id.* at 329.

For over 150 years, Mississippi has consistently maintained its policy of preserving the integrity of county boundaries. This policy as recognized in *Mahan* v. *Howell* is a rational one. The district court recognized that "[b]y the use of *multiple member districts,* without fracturing county boundaries, the Mississippi Legislature could be apportioned in a manner which would comply with one man-one vote principles" (App. Vol. III, 98, emphasis in original). There is no language in *Connor* v. *Williams,* 404 U.S. 549, *Chapman* v. *Meier,* 420 U.S. 1, or *Mahan* v. *Howell,* 410 U.S. 315, that suggests a court-ordered plan *must use* single-member districts exclusively and ignore a rational state policy.[33]

[33] Intervenor makes the argument that the district court was required to use only single-member districts in fashioning its plan. *See* Mr. Johnson, Attorney for Intervenor, June 15, 1976 hearing, Supp. App. 101a. The intervenor [The United States Attorney General] believes multi-member districts are per se unconstitutional (Supp. App. 100a). Thus, *any* State enacted legislative reapportionment plan that contains multi-member districts would be disapproved by the Attorney General. The intervenor's insistence for a reapportionment plan devoid of multi-member districts requires abandonment of a long-standing rational state policy.

The Court upheld in *Mahan* v. *Howell* a district court order that created a multi-member district. 410 U.S. at 333. In *Mahan,* the State argued that the district court had imposed a multi-member district contrary to the State legislative policy favoring single-member districts. *Id.* at 331. In the present case, the district court *refused* to use multi-member districts even though there is a State policy of using multi-member districts to avoid fracturing of county boundaries.

It is well established that multi-member districts are not *per se* unconstitutional. *Chapman* v. *Meier, supra,* 420 U.S. at 15; *White* v. *Regester,* 412 U.S. 755, 765 (1973); *Mahan* v. *Howell, supra,* 410 U.S. at 332-333; *Whitcomb* v. *Chavis,* 403 U.S. 124, 142 (1971); *Burns* v. *Richardson,* 384 U.S. 73 (1966); *Fortson* v. *Dorsey,* 379 U.S. 433 (1965). This Court on a number of occasions approved reapportionment plans that included multi-member districts.[34] *Dallas Cty, Ala.* v. *Reese,* 421 U.S. 477 (1975); *Chapman* v. *Meier, supra; Mahan* v. *Howell, supra; Abate* v. *Mundt,* 403 U.S. 182 (1971); *Whitcomb* v. *Chavis, supra; Burns* v. *Richardson, supra; Fortson* v. *Dorsey, supra.*

In *Whitcomb* v. *Chavis,* 403 U.S. 124, this Court reversed a three-judge district court which had found

[34] In *Whitcomb, supra,* 403 U.S. at 157, fn. 37, it was noted that as of 1970, 46 percent of the upper houses and 62 percent of the lower houses in the States contained some multi-member districts.

unconstitutional the legislative district for Marion County, Indiana. Marion County was a multi-member district electing eight senators and fifteen representatives. Plaintiffs, black voters in Marion County, challenged the multi-member district as invidiously diluting the force and effect of their vote. The district court in fashioning a reapportionment plan created single-member districts in Marion County. In drawing district lines, judicial notice was taken of the location of the nonwhite population in the State. The court's plan was expressly aimed at creating legislative districts so as to give recognition to black voters in the State. *Id.* at 139.

In reversing the district court, this Court held that the question of the constitutional validity of multimember districts has focused on the quality of representation afforded by the multi-member district as compared with single-member districts. *Whitcomb* v. *Chavis, supra,* 403 U.S. at 142. Multi-member districts may be subject to challenge where they are designed or "operate to minimize or cancel out the voting strength of racial or political elements of the voting population." [35] Id. at 143. Accord, *Fortson* v. *Dorsey, supra,* 379 U.S. at 439; *Burns* v. *Richardson, supra,* 384 U.S. 88. But this Court insisted that it was not enough merely to allege this invidious discrimination, the challenger carries "the burden of proving that multi-member districts unconstitutionally operate to dilute or cancel the voting strength of racial or political elements." *Whitcomb* v. *Chavis, supra,* 403 U.S. at 144.

Examining the record, this Court found no evidence of invidious discrimination:

[35] *See, e.g., White* v. *Regester,* 412 U.S. 755 where this Court upheld an invalidation of multi-member districts. The lower court had found that the districts were designed and operated so as to exclude Mexican-Americans from effective participation in political life.

> We have discovered nothing in the record or in the court's findings indicating that poor Negroes were not allowed to register or vote, to choose the political party they desired to support, to participate in its affairs or to be equally represented on those occasions when legislative candidates were chosen. Nor did the evidence purport to show or the court find that inhabitants of the ghetto were regularly excluded from the states of both major parties, thus denying them the chance of occupying legislative seats. *Whitcomb* v. *Chavis, supra,* 403 U.S. at 149-150.

Similarly, the voluminous record in this case is noticeably lacking of evidence of invidious discrimination. As discussed above, multi-member districts have been common in Mississippi for over 150 years. Thus, multi-member districts do not have as their purpose an attempt to minimize or cancel plaintiffs' voting strength.

Dr. Gordon G. Henderson testifying on behalf of plaintiffs, admitted that he knew of no blacks in Mississippi having any difficulty in voting within the last five years (Hearing of May 7, 1965, App. Vol. II, 73); nor did he know of instances where race prevented an individual from qualifying as a candidate for a desired office, participating in the candidate election process or any other portion of the political process (*Id.*, App. Vol. II, 73-74).

Reverend Rims Barber, Associate Director of the Delta Ministry, an organization "to assist persons and groups of people who are oppressed by poverty or by discrimination in the State of Mississippi" (Hearing of May 7, 1975, App. Vol. II, 81-82), also testified on behalf of plaintiffs. Reverend Barber testified that

"technical bars to political participation are 99 percent down" (*Id.*, App. Vol. II, 100), and like Dr. Henderson, he had not observed in the last five to six years anybody denied the right to register on account of race (*Id.*, App. Vol. II, 107).

One of the plaintiffs, Mr. Henry J. Kirksey, a black citizen and candidate for State senator from Hinds County in the 1971 election, also testified at the May 7, 1975 hearing (Hearing of May 7, 1975, App. Vol. II, 114). Mr. Kirksey testified that he had voted in nearly every election in Hinds County since 1961 and had encountered no problems in participating in the political process (*Id.*, App. Vol. II, 124-125).

Plaintiffs have failed to carry their burden of proof, *White* v. *Regester, supra,* 412 U.S. at 766, and demonstrate that multi-member districts as utilized in Mississippi constitute invidious discrimination.

> Speculations do not supply evidence that the multi-member districting was designed to have or had the invidious effect necessary to a judgment of the constitutionality of the districting. *Burns* v. *Richardson, supra,* 384 U.S. at 88-89.

The evidence is devoid of a showing that multi-member districts operate to minimize or cancel plaintiffs' votes. The district court has never made such a finding. Having failed to find that multi-member districts invidiously discriminate, the district court erred in refusing to utilize multi-member districts in the reapportionment plan.

> The remedial powers of an equity court must be adequate to the task, but they are not unlimited. Here the District Court erred in so broadly brushing aside state apportionment policy without solid

> constitutional or equitable grounds for doing so. *Whitcomb* v. *Chavis, supra,* 403 U.S. at 161.

In the present case, the district court resorted to the exclusive use of single-member districts "in the hope that this long-running controversy may at last be terminated" (App. Vol. III, 98). By utilizing single-member districts exclusively in its plan, the court was forced to abandon the State policy of preserving the integrity of political boundaries. However admirable the desire to terminate this long-running controversy may be, it is not sufficient to justify the "brushing aside" of Mississippi's long-standing policy.

B. WITHOUT FINDING ANY CONSTITUTIONAL INFIRMITIES IN THE REAPPORTIONMENT PLAN PURSUANT TO WHICH THE 1975 ELECTIONS WERE HELD, THE DISTRICT COURT SHOULD NOT HAVE ORDERED SPECIAL ELECTIONS

The District Court held that the 1975 court-ordered reapportionment plan, pursuant to which the 1975 legislative elections were held, "comported with all pertinent Constitutional standards" (App. Vol. III, 223). Nevertheless, the district court believed that it was required to replace the 1975 plan with a reapportionment plan that contained only single-member districts (App. Vol. III, 98).

Special elections should not be ordered by the district court until it makes the finding that its new reapportionment plan remedies a previously defective district. That district must be found to have unconstitutionally diluted the voting strength of a racial or political group. Any other basis for special elections would result in the continual disruption of state legis-

latures whenever a new reapportionment plan is formulated that merely improves upon prior plans.

This Court held in *White* v. *Regester,* 412 U.S. 755, that to sustain a claim of racial dilution, "it is not enough that the racial group allegedly discriminated against has not had legislative seats in proportion to its voting potential. The plaintiffs' burden is to produce evidence to support findings that the political processes leading to nomination and election were not equally open to participation by the group in question —that its members had less opportunity than did other residents in the district to participate in the political processes and to elect legislators of their choice." *Id.* at 765-766.

The district court found that plaintiff had failed to demonstrate any present impact from past discrimination: that plaintiffs had failed to show legislative unresponsiveness to the needs of black citizens (App. Vol. III, 225); and that " 'The Voting Rights Act of 1965 has effectively reduced all such racially discriminating factors to what honestly may be termed an irreducible minimum' " (App. Vol. III, 226). In short, as discussed in our previous section, the record fails to support plaintiffs' claims of racial dilution.[36]

Although it failed to find any unconstitutional racial dilution, the district court nevertheless ordered special

[36] In *Connor* v. *Waller, supra,* 396 F. Supp. 1308, the district court held that the plaintiffs' failed to demonstrate that their voting strength had been unconstitutionally diluted. After this Court reversed on other grounds, 421 U.S. 656, the district court at a hearing held on June 20, 1975 offered all parties the opportunity to produce additional evidence to prove racial dilution. All parties elected to stand on the record (Hearing of June 20, 1975, Supp. App. 77a-78a).

elections in two newly created districts, House Districts 79 and 97 (App. Vol. III, 227, 228).

House District 79 was created out of a 1975 court-fashioned multimember district[37] with 65.5 percent white population majority, and under the 1979 permanent plan it has a black population majority of 56.1 percent (App. Vol. III, 227). House District 97 was created out of a 1975 court-fashioned multimember district with a 54.2 percent white majority,[38] and under the 1979 permanent plan it has a black majority of 60.6 percent. Other than citing these statistics, no other reason was given for ordering special elections.

Since the district court did not find that the 1975 plan unconstitutionally diluted the black voting strength the court could not have used the constitutional standards of dilution to determine in which districts special elections would be held.

In determining in which districts special elections would be held the district court stated,

[37] House District 79 was created out of House District 24, a multi-member district electing 4 representatives at-large from Lauderdale and Kemper Counties. Kemper County has a black population percentage of 54.8 percent. Under the 1975 court plan, one of the 4 representatives from this two-county district was required to be a resident of Kemper County.

[38] House District 97 was created out of House District 34, a three-county multi-member district electing two representatives at-large from Wilkinson, Amite and Franklin Counties. Although the district court stated in its November 12, 1976 order that under the 1975 plan District 34 had a 54.2 percent white population (App. Vol. III, 228), in its July 11, 1975 order creating District 34, the court stated that District 34 had a 53.4 percent black population (App. Vol. II, 215). Census figures reveal that the latter figure is the correct one.

> . . . that the only available thesis for ordering special elections in any of the newly formulated legislative districts would be where required to remedy any impermissible dilution of black voting strength in the temporary plan when compared with the permanent plan established for the 1979 elections (App. Vol. III, 224).

Thus, the district court examined districts not under the constitutional standard of dilution, but rather under the standard of dilution applicable to cases cognizable under Section 5 of the Voting Rights Act of 1965, *as amended*, 42 U.S.C. § 1973c.

Section 5 requires a comparison of the actual voting strength potential under the election arrangement sought to be approved with the actual voting strength potential of the previous election arrangement. This Court held in *Beer* v. *United States*, 425 U.S. 130 (1976), that:

> [T]he purpose of § 5 has always been to insure that no voting-procedure changes would be made that would lead to a *retrogression* in the position of racial minorities with respect to their effective exercise of the electoral franchise. *Id.* at 141 (emphasis supplied).

Apparently applying the Section 5 rationale in an inverted fashion, the district court compared the black population percentages in its 1975 temporary plan with the corresponding black population percentages in the permanent plan. In two districts where it found an increase in black population percentages, the district court ordered special elections.

This is not a Section 5 case. The question whether there was racial dilution under the 1975 Court plan

cannot be determined by *comparing* black population percentages under that plan with those found in either the permanent plan or any other plan. The constitutional standard must be applied to determine whether racial dilution existed under the 1975 Court plan.

As enunciated in *Fortson* v. *Dorsey*, 379 U.S. 433, *Burns* v. *Richardson*, 384 U.S. 73, *Whitcomb* v. *Chavis*, 403 U.S. 124 and *White* v. *Regester*, 412 U.S. 755 the constitutional standard applicable to the determination of whether a redistricting or reapportion plan impermissibly dilutes, minimizes or cancels out the voting strength of indentifiable racial or ethnic minorities is whether such groups have equal access and opportunity to fully participate in the political processes. As discussed earlier in this brief, plaintiffs have failed to carry their burden of proof and demonstrate that their voting strength has been minimized or cancelled.

In addition to the absence of evidence to support a finding of unconstitutional dilution, plaintiffs have similarly failed to demonstrate purposeful racial discrimination. Where official action is challenged, "proof of racially discriminatory intent or purpose is required to show a violation of the Equal Protection Clause." *Village of Arlington Heights* v. *Metropolitan Housing Development Corporation*, 45 U.S.L.W. 4073 (U.S. Jan. 11, 1977).

Last term, this Court in *Washington* v. *Davis*, 426 U.S. 229 (1976), made it clear that official action will not be held to unconstitutionally violate the Fourteenth Amendment Equal Protection Clause without demonstrating a racially discriminatory purpose or intent. In the context of election apportioning, this Court

discussed *Wright* v. *Rockefeller*, 376 U.S. 52 (1964) where it had,

> . . . . upheld a New York congressional apportionment statute against claims that district lines had been racially gerrymandered. The challenged districts were made up predominantly of whites or of minority races, and their boundaries were irregularly drawn. The challengers did not prevail because they failed to prove that the New York legislature 'was either motivated by racial considerations or in fact drew the districts on racial lines'; the plaintiffs had not shown that the statute 'was the product of a state continuance to segregate on the basis of race or place of origin'; . . . The dissenters were in agreement that the issue was whether the 'boundaries . . . were purposefully drawn on racial lines . . .' " *Washington* v. *Davis*, supra, 426 U.S. at 240.

Plaintiffs and intervenor in this action have not even attempted to demonstrate that the district court was motivated by racial considerations in its formation of the 1975 court plan. As the 1975 elections were held pursuant to a constitutional plan and there has been no showing of impermissible racial dilution, the district court erred in ordering special elections.

CONCLUSION

For the foregoing reasons, the judgment of the district court should be reversed and remanded with instructions to formulate a reapportionment plan that preserves the integrity of the county boundaries.

Respectively submitted,

A. F. Summer
Attorney General, State of Mississippi

Giles W. Bryant
Special Assistant Attorney General

William A. Allain
Special Counsel
Post Office Box 220
Jackson, Mississippi 39205
601/354-7130

Jerris Leonard
Thomas A. Karol
1747 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
202/872-1095

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In the Supreme Court of the United States

OCTOBER TERM, 1976

PEGGY J. CONNOR, ET AL., APPELLANTS

v.

CLIFF FINCH, GOVERNOR OF THE STATE OF MISSISSIPPI, ET AL.

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UNITED STATES OF AMERICA, APPELLANT

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v.

CLIFF FINCH, GOVERNOR OF THE STATE OF MISSISSIPPI, ET AL.

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

BRIEF FOR THE UNITED STATES

DANIEL M. FRIEDMAN,
Acting Solicitor General,
J. STANLEY POTTINGER,
Assistant Attorney General,
LAWRENCE G. WALLACE,
Deputy Solicitor General,
HOWARD E. SHAPIRO,
Assistant to the Solicitor General,

BRIAN K. LANDSBERG,
JOHN C. HOYLE,
JESSICA DUNSAY SILVER,
VINCENT F. O'ROURKE,
Attorneys,
Department of Justice,
Washington, D.C. 20530.

INDEX

	Page
Opinions below	2
Jurisdiction	2
Constitutional provisions and statutes involved	3
Questions presented	4
Statement	4
A. The basis for reapportionment in Mississippi	5
B. Racial discrimination in voting practices in Mississippi	7
C. Procedural history of this litigation	11
1. Invalidation of the 1962 and 1967 Reapportionment Acts	11
2. The 1971 temporary plan ordered by the district court	11
3. This Court's reversal of the district court's approval of the 1975 legislative plan	13
a. The 1975 legislative plan	14
b. Reversal of the district court's approval	15
4. The 1975 temporary plan and the district court's intent to adopt a final plan	16

Statement—Continued

	Page
a. Objections to reliance on the 1971 court-ordered temporary plan and the 1975 legislative enactment	16
b. The 1975 temporary plan	17
5. Postponement of the district court's final plan	18
6. This Court's direction that the district court adopt a final plan	19
7. The district court's final judgment	20
D. The district court's plan	21
1. The district court's criteria for decision	21
2. The Senate and House plans	22
3. Alternative plans offered by the plaintiffs	24
4. Modifications of the plan by the district court	25
E. Requests for special elections	26
Summary of argument	28
Argument	33
I. The district court's final plan is not a proper equitable remedy because it perpetuates the effects of past racial discrimination in Mississippi voting and legislative apportionment	33

Argument—Continued

	Page
A. Court-ordered reapportionment plans may not unnecessarily dilute minority voting rights or cancel minority voting strength	33
B. The effects of the past discrimination against blacks in the electoral process continues today	39
1. Racial bloc voting in Mississippi	39
2. The past as a disincentive to black political participation	41
3. The effect of past discrimination on recent elections	43
4. The dilutive impact of racial bloc voting on black voting rights	45
C. The remedy for the dilutive effects of past discrimination and bloc voting is to avoid unnecessarily submerging black voting age population concentrations in white majority districts	51
D. The district court's plan unnecessarily fragments concentrations of black voters and submerges them into white majority districts	59
1. The dilutive effects of the 1975 court-ordered temporary plan	59
a. The 1975 legislative plan	60

Argument—Continued

	Page
b. The 1975 court-ordered temporary plan under which the current legislature was elected	62
2. The final plan's elimination of unnecessary dilution in many districts by creation of single-member districts throughout the state	66
3. The final plan's failure to remedy unnecessary dilution in six counties	74
a. Hinds County	75
b. Warren County	82
c. Forrest County	86
d. Washington County	88
e. Jefferson and Claiborne Counties	90
II. With formulation of the final plan, special elections are required in certain districts to remedy, without further delay, the dilution existing under prior plans	92
A. The district court's criteria for refusing to order special elections were erroneous	95

Argument—Continued

	Page
B. Special elections should be ordered in districts changed to black voting age majorities, and in districts in which the change from multi-member to single-member representation was accompanied by a significant increase in black voting strength	97
1. Changes from white to black voting age majorities	97
2. Significant increases in black voting age population	101
3. Other considerations	102
Conclusion	103
Appendices:	
Table of Contents	IA
A	1a
B	39a
C	45a
D	73a

CITATIONS

Cases:

Adickes v. *Kress & Co.*, 398 U.S. 144	44
Alexander v. *Board of Education*, 396 U.S. 19, vacating and remanding *United States* v. *Hinds County School Board*, 417 F. 2d 852, certiorari denied, 396 U.S. 1032	45

Cases—Continued Page

Allen v. *State Board of Education*, 393 U.S. 544 55
Beer v. *United States*, 425 U.S. 130 ..... 19, 30, 49, 56, 57
Board of Education v. *Swann*, 402 U.S. 43 ..... 55, 57
Brown v. *Board of Education (Brown I)*, 347 U.S. 483 45
Brown v. *Board of Education (Brown II)*, 349 U.S. 294 45
Burns v. *Richardson*, 384 U.S. 73 ..... 36, 52
Chapman v. *Meier*, 420 U.S. 1 ..... 28, 34, 35, 36, 54, 61, 75
City of Petersburg v. *United States*, 354 F. Supp. 1021, affirmed, 410 U.S. 962 36, 55
City of Richmond v. *United States*, 422 U.S. 358 ..... 36, 55
Connor v. *Coleman*, 425 U.S. 675 ..... 5, 13, 16, 20, 93
Connor v. *Johnson*, 256 F. Supp. 962 11
Connor v. *Johnson*, 330 F. Supp. 506 11
Connor v. *Johnson*, 330 F. Supp. 521 12
Connor v. *Johnson*, 402 U.S. 690 ..... 5, 12, 36, 78
Connor v. *Waller*, 421 U.S. 656 ..... 5, 15, 35
Connor v. *Waller*, 396 F. Supp. 1308 ..... 13, 15, 46
Connor v. *Williams*, 404 U.S. 549 ..... 5, 13, 19, 36, 78
Dallas County v. *Reese*, 421 U.S. 477 51
Drum v. *Seawell*, 249 F. Supp. 877, affirmed, 383 U.S. 831 96
Dunn v. *Blumstein*, 405 U.S. 330 ..... 45, 47, 75
East Carroll Parish School Board v. *Marshall*, 424 U.S. 636 ..... 19, 28, 35, 36, 51, 54

Cases—Continued Page

Fortson v. *Dorsey*, 379 U.S. 433 ..... 28, 36
Georgia v. *United States*, 411 U.S. 526 34
Graves v. *Barnes*, 343 F. Supp. 704, affirmed *sub nom. White* v. *Regester*, 412 U.S. 755 ..... 37, 50, 51, 53, 54, 57
Hadnott v. *Amos*, 394 U.S. 358 96
Hall v. *Issaquena County*, 453 F. 2d 404 96
Hamer v. *Campbell*, 358 F. 2d 215, certiorari denied, 385 U.S. 851 96
Howard v. *Adams County Board of Supervisors*, 453 F. 2d 455, certiorari denied, 407 U.S. 925 38
Keller v. *Gilliam*, 454 F. 2d 55 96
Kirksey v. *Board of Supervisors of Hinds County*, 528 F. 2d 536, reheard September 9, 1976 ..... 57, 76
Kirksey v. *Board of Supervisors of Hinds County*, 402 F. Supp. 658 76
Kramer v. *Union Free School District, No. 15*, 395 U.S. 621 ..... 45, 47, 48
Louisiana v. *United States*, 380 U.S. 145 54
Mahan v. *Howell*, 410 U.S. 315 ..... 34, 36
Mann v. *Davis*, 238 F. Supp. 458, affirmed *sub nom. Hughes* v. *WMCA*, 374 U.S. 694 96
Moore v. *Leflore County Board of Election Commissioner*, 502 F. 2d 621 53
Morrow v. *Crisler*, 479 F. 2d 960, affirmed and remanded, 491 F. 2d 1053, certiorari denied, 419 U.S. 895 45
Perkins v. *Mathews*, 400 U.S. 379 ..... 35, 55
Ratliff v. *Beale*, 74 Miss. 247, 20 So. 865 ..... 8, 9

Cases—Continued

	Page
Reynolds v. *Sims*, 377 U.S. 533	34, 45-46, 47, 55, 93
Smith v. *Allwright*, 321 U.S. 649	45
Smith v. *McGee*, S.D. Miss., Civ. A. No. 4483, decided May 12, 1976	77
South v. *Peters*, 339 U.S. 276	47
South Carolina v. *Katzenbach*, 383 U.S. 301	7
Stewart v. *Waller*, 404 F. Supp. 206	44
Swann v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1	55
Taylor v. *McKeithen*, 407 U.S. 191	38
Tombs v. *Fortson*, 241 F. Supp. 65, affirmed, 384 U.S. 210	96
Toney v. *White*, 488 F. 2d 310	96
Town of Sorrento v. *Reine*, 425 U.S. 946	96
United Jewish Organization of Williamsburgh, Inc. v. *Carey*, No. 75-104, certiorari granted, 423 U.S. 945, argued October 6, 1976	19
United States v. *City of Jackson, Mississippi*, 318 F. 2d 1	44
United States v. *Duke*, 332 F. 2d 759	8-9
United States v. *Lynd*, 349 F. 2d 790	9
United States v. *Lynd*, 301 F. 2d 818, certiorari denied, 371 U.S. 893	8, 9
United States v. *McClellan*, 248 F. Supp. 62	9
United States v. *State of Mississippi*, 229 F. Supp. 925, reversed and remanded, 380 U.S. 128	9, 10
United States v. *Montgomery County Board of Education*, 395 U.S. 225	55

Cases—Continued

	Page
Village of Arlington Heights v. *Metropolitan Housing Development Corp.*, No. 75-616, decided January 11, 1977	81
Wade v. *Mississippi Cooperative Extension Service*, 528 F. 2d 508	45
Wallace v. *House*, 515 F. 2d 619, vacated on other grounds, 425 U.S. 947	35, 50, 56
Whitcomb v. *Chavis*, 403 U.S. 124	28, 36, 47, 48, 49, 56
White v. *Regester*, 412 U.S. 755	28, 36, 37, 46, 47, 54, 56, 92, 93
Wright v. *Rockefeller*, 376 U.S. 52	54
Zimmer v. *McKeithen*, 485 F. 2d 1297, affirmed on other grounds *sub nom. East Carroll Parish School Board* v. *Marshall*, 424 U.S. 636	51, 53

Constitution, statutes, and rule:

United States Constitution:	
Fourteenth Amendment	3, 5, 11, 48
Section 1	3
Section 5	3
Fifteenth Amendment	4, 5, 7, 11, 29, 48
Section 1	4
Section 5	4
Voting Rights Act of 1965, 79 Stat. 437, as amended, 42 U.S.C. 1973, *et seq.*:	
Section 2, 42 U.S.C. 1973	16
Section 4, 42 U.S.C. 1973b	34
Section 5, 42 U.S.C. 1973c	15, 16, 31, 34, 55, 77
Section 12, 42 U.S.C. 1973j(d)	16

Constitution, statutes, and rule—Continued Page

42 U.S.C. 1971(a)(1) 16
42 U.S.C. 1971(c) 16
42 U.S.C. 2000h-2 16

Miss. Const. (1890):

Art. 8, § 207 45
Art. 12, § 243 9
Art. 12, § 244 8
Art. 13, § 254 ..... 6, 21
Art. 13, § 255 6
Art. 14, § 263 45

Miss. Laws, 1902, Ch. 66 10
Miss. Laws, 1954, Ch. 427 8
Miss. Laws, 1955, Ex. Sess., Ch. 133 8
Miss. Code Ann. §§ 23-3-69, 23-5-203 (1972) 48
Miss. Code Ann., § 3129 (Recompiled 1956) 10
Fed. R. Civ. P., Rule 59 18

Miscellaneous:

Bonapfel, *Minority Challenges to At-Large Elections: The Dilution Problem*, 10 Ga. L. Rev. 353 (1976) 50, 58
Garner, *Reconstruction in Mississippi*, (1968 ed.) 7
Hearings on S. 407, S. 903, S. 1297, S. 1409, and S. 1443, before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary, 94th Cong., 1st Sess. (1975) 41

Miscellaneous—Continued Page

6 *National Roster of Black Elected Officials*, Joint Center for Political Studies, Washington, D.C. (August 1976) 7, 44
Note, *Compensatory Racial Reapportionment*, 25 Stan. L. Rev. 84 (1972) 57, 58
Note, *The Supreme Court 1970 Term*, 85 Harv. L. Rev. 3 (1971) 49
Schwartz, *Statutory History of the United States: Civil Rights* (1970) 48
United States Bureau of the Census, *Census of Population 1970*, Volume I, *Characteristics of the Population*, Part 26 42
Voting in Mississippi, A Report of the United States Commission on Civil Rights (1965) 7, 8, 9, 10

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v.

PEGGY J. CONNOR, ET AL. AND UNITED STATES OF AMERICA

No. 76-934

UNITED STATES OF AMERICA, APPELLANT

v.

CLIFF FINCH, GOVERNOR OF THE STATE OF MISSISSIPPI, ET AL.

No. 76-935

PEGGY J. CONNOR, ET AL., APPELLANTS

v.

CLIFF FINCH, GOVERNOR OF THE STATE OF MISSISSIPPI, ET AL.

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The district court's opinions of August 24, 1976 (III A. 94-116),[1] and September 8, 1976 (III A. 117-138) are reported at 419 F. Supp. 1072 and 1089. The district court's opinion of November 12, 1976 (III A. 220-231) is reported at 422 F. Supp. 1014. Its final judgment (III A. 232-248) and order amending previous judgment (III A. 279-282) are not reported.

JURISDICTION

In this reapportionment case, a three-judge district court held that the Mississippi legislature was unconstitutionally apportioned, and extensive litigation followed. The United States intervened as a party plaintiff on June 11, 1975 (II A. 128). The final judgment of the district court establishing a final legislative reapportionment plan for the Mississippi Senate and Mississippi House of Representatives was entered on November 18, 1976 (III A. 232-248), and was amended on December 21, 1976 (III A. 279-282), after consideration of plaintiffs' timely objections and motion to alter or amend judgment (III A. 250-258). The United States filed its notice of appeal on December 28, 1976 (III A. 284). This Court noted probable jurisdiction of the United States' appeal on January 17, 1977 (III A. 286).

[1] As used herein, "I A." indicates volume I of the Appendix, "II A." indicates volume II and "III A." indicates volume III. References to other documents contained in the record, but not included in the appendix, are cited by document number, *e.g.*, R. Doc. 1.

The jurisdiction of this Court is invoked under 28 U.S.C. 1253. *Connor* v. *Williams*, 404 U.S. 549; *Connor* v. *Waller*, 421 U.S. 656.[2]

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Fourteenth Amendment to the United States Constitution provides in part:

> SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.
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> SECTION 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

[2] On December 8, 1976, this Court noted probable jurisdiction (III A. 285) in *Connor* v. *Finch*, No. 76-777, an application by the private plaintiffs in this case which the Court, at the suggestion of the United States, treated as an expedited appeal. On January 17, 1977, the Court also noted probable jurisdiction in other appeals from the same judgment, No. 76-933, an appeal by the defendant officials, and No. 76-935, an additional appeal by the private plaintiffs, and consolidated the cases (III A. 286). The Court established an expedited schedule, requiring that all parties file briefs by February 7, 1977, and responsive briefs by February 21, 1977, and set oral argument for February 28, 1977 (III A. 286).

The Fifteenth Amendment provides:

> SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.
>
> SECTION 2. The Congress shall have power to enforce this article by appropriate legislation.

Pertinent provisions of the applicable statutes appear in Brief Appendix D.[3]

QUESTIONS PRESENTED

1. Whether the district court's final plan reapportioning the Mississippi legislature improperly dilutes the voting strength of black citizens in certain districts.

2. Whether special elections are required in districts of the Mississippi legislature in which the final apportionment plan ordered by the district court to be effective in the 1979 elections (for the 1980 legislative session) will substantially remedy the dilution of the voting rights of black citizens occurring in those districts under preceding apportionment plans.

STATEMENT

This case involves the reapportionment of the Mississippi legislature. It is before the Court for the

[3] Appendices A, B, C, and D to this brief appear infra, pp. 1a-75a.

fifth time,[4] following a hearing pursuant to this Court's direction of May 19, 1976, in *Connor* v. *Coleman*, 425 U.S. 675.

In 1965 private plaintiffs filed this suit alleging that the 1962 apportionment of the legislature violated the Fourteenth and Fifteenth Amendments (I A. 37-46). The litigation resulted in the invalidation of reapportionment plans adopted by the state legislature in 1962, 1966, 1971, and 1975. Elections were conducted under temporary plans formulated by the district court in 1971 and 1975 which included multimember districts. The present appeals concern (1) the court's final apportionment plan, adopted in 1976, which will govern the election of the legislature in 1979; and (2) the need for special elections in certain districts for seats in the legislature elected under the district court's 1975 temporary plan, which will sit through 1979. The United States will address these issues as they affect the rights of black voters in Mississippi.

A. The Basis For Reapportionment In Mississippi.

The Mississippi legislature consists of a 52-member Senate and a 122-member House of Representatives. Miss. Const. Art. 13, §§ 254, 255. On the basis of the 1970 census,[5] the legislature must be apportioned

[4] See *Connor* v. *Johnson*, 402 U.S. 690; *Connor* v. *Williams*, 404 U.S. 549; *Connor* v. *Waller*, 421 U.S. 656; *Connor* v. *Coleman*, 425 U.S. 675.

[5] All statistics cited in this brief are derived from 1970 census data, as described in Brief Appendix B.

among a total state population of 2,216,912, consisting of 36.8 percent blacks, 62.8 percent whites, and 0.4 percent other races.[6] The state constitution prescribes that legislative districts should be drawn within county lines. Miss. Const. Art. 13, §§ 254, 255. There are 82 counties in the state, among which there is wide population variation. The arithmetic ideal is 42,633 for Senate districts and 18,171 for House districts. There are 70 counties with a population of less than 42,633 and 12 with more than that number. There are 39 counties with a population of less, and 43 with more, than 18,171. To minimize variance among districts it is therefore necessary either to divide counties and combine portions with other counties, thus disregarding county boundaries, or to resort to multi-member districting.

The distribution of blacks in the state also varies. There are 25 counties with a black population majority and 17 with a black voting age majority. Of the 12 counties with population in excess of 42,633, the ideal for Senate districts, two have black population majorities and one has a black voting age majority. Of counties with less than the Senate ideal, 23 have black population majorities and 16 have black voting age majorities. Of the 43 counties with populations in excess of 18,171, the ideal for House districts, 12 have black population majorities and eight have black voting age majorities. Of counties with less than the House ideal, 13 have black population majorities and nine have black voting age majorities.

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[6] Blacks comprise 31.4 percent of the voting age population (18 years or older).

B. Racial Discrimination In Voting Practices In Mississippi.

The Fifteenth Amendment to the United States Constitution was ratified in 1870. Within a short time Mississippi and other states of the Confederacy began to enact legislation designed to prevent blacks from influencing the electoral process. *South Carolina* v. *Katzenbach*, 383 U.S. 301, 310.

The success of the disfranchising endeavor in Mississippi is demonstrated by the fact that there were at least thirty-one black representatives and five black senators in the 1870 Mississippi legislature[7] and fifty-five black representatives and nine black senators in the legislature elected in 1873,[8] while between 1900 and 1975 only one black candidate was elected to the legislature (R. Doc. 154, Hearing of May 7, 1975, Tr. at 46). There are currently only four black members of the Mississippi House and no black members of the Senate.[9] Similarly, in 1867 approximately 66.9 percent of the black voting age population was registered to vote, *Voting in Mississippi* 8, A Report of the United States Commission on Civil Rights (1965) (hereinafter cited as *Voting in Mississippi*), while in 1964 only 6.4 percent of the black voting age population was registered. *South Carolina* v. *Katzenbach*, *supra*, 383 U.S. at 313.

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[7] Garner, *Reconstruction in Mississippi* 269-270 (1968 ed.).

[8] Garner, *supra*, at 294.

[9] 6 *National Roster of Black Elected Officials* 112, Joint Center for Political Studies, Washington, D.C. (August 1976).

Mississippi employed four devices in discriminating against black participation in the electoral process: (1) a racially discriminatory apportionment of the legislature, (2) an annual poll tax, (3) a literacy test, and (4) a "whites only" primary system. See Appendix A to this Brief (cited Brief App. A).

All four of these methods have been utilized in concert during the last eighty-five years. Although racially discriminatory apportionment was first utilized in the 1889 apportionment and the 1890 Constitutional Convention of Mississippi, which "[w]ithin the field of permissible action under the limitations imposed by the federal constitution * * * swept the circle of expedients to obstruct the exercise of the franchise by the negro race," *Ratliff* v. *Beale*, 74 Miss. 247, 266, 20 So. 865, 868, it was not the primary means of discrimination; the literacy test, the poll tax, and the white primary were far more effective in disfranchising black voters. *Voting in Mississippi*, *supra*, at 8. These devices made racially discriminatory apportionment moot.

The literacy test, as adopted by the 1890 Convention, Miss. Const. Art. 12, § 244, and as subsequently amended, Miss. Laws, 1954, Ch. 427; Miss. Laws, 1955, Ex. Sess., Ch. 133, enabled registrars to disfranchise black voters by (1) requiring blacks to read and interpret more difficult sections of the Constitution than those read and interpreted by whites; *United States* v. *Lynd*, 301 F. 2d 818, 822 n. 1 (C.A. 5), certiorari denied, 371 U.S. 893; *United States*

v. *Duke*, 332 F. 2d 759 (C.A. 5); *Voting in Mississippi*, *supra*, at 14; (2) using a double standard less favorable to blacks in determining whether black applicants had properly interpreted the constitutional sections assigned; *United States* v. *Lynd*, 349 F. 2d 790, 792 n. 3 (C.A. 5); and (3) assisting whites to register but not assisting blacks. *United States* v. *Lynd*, 301 F. 2d 818, 821 (C.A. 5), certiorari denied, 371 U.S. 893; *United States* v. *McClellan*, 248 F. Supp. 62, 66 (S.D. Miss.); *United States* v. *Duke*, 332 F. 2d 759 (C.A. 5); *Voting in Mississippi*, *supra*, at 14. Moreover, the discriminatory application of the "understanding test" was enhanced by the fact that blacks in the State of Mississippi up until very recent times were afforded an education far inferior to that afforded whites. *Voting in Mississippi*, *supra*, at 41-47; *United States* v. *State of Mississippi*, 229 F. Supp. 925, 990-994 (S.D. Miss.) (Brown, J., dissenting), reversed and remanded, 380 U.S. 128. See *Gaston County* v. *United States*, 395 U.S. 285, 296-297.

The poll tax instituted in Miss. Const. Art. 12, § 243 (1890), which was "primarily intended by the framers of the constitution as a clog upon the franchise," *Ratliff* v. *Beale*, *supra*, 74 Miss. at 268, 20 So. at 869, initially served as a disincentive to the exercise of the franchise by poor blacks. Later the poll tax was utilized as a means of disfranchising black voters because the requirement that the poll tax be paid for two consecutive years erected a procedural hurdle subject to discriminatory application by local officials. *Voting in Mississippi*, *supra*, at 19.

The "white primary," limiting participation in primaries to white voters, denied blacks access to membership in the State Democratic Party, the controlling party in the state. This denial was accomplished through an interplay of state laws, Miss. Laws, 1902, Ch. 66; Miss. Code Ann., § 3129 (Recompiled 1956), and party regulations which effectively prevented blacks from participating in Democratic Party Primaries.[10] No blacks were nominated for state offices in Democratic Party Primaries between 1900 and 1975 (R. Doc. 154, Hearing of May 7, 1975, Tr. at 46).[11]

The Voting Rights Act of 1965 prohibited many of the practices Mississippi historically utilized to disfranchise black voters. The white primary, the poll tax, and literacy tests are no longer means of voter discrimination, and blacks are able to vote and to participate in the electoral process in Mississippi to a more significant degree. However, apportionment has survived as a method of minimizing black voting strength in Mississippi. Brief Appendix A traces an unbroken chain of racially dilutive apportionment plans adopted by the state, from 1890 to 1975. See also pp. 59-62, *infra*.

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[10] *Voting in Mississippi, supra,* at 3; *United States* v. *State of Mississippi,* 229 F. Supp. 952, 989 (S.D. Miss.) (Brown, J., dissenting).

[11] In August 1975, several black candidates were nominated for the legislature in Democratic Party Primaries (R. Doc. 209, Submission of the United States, filed January 26, 1976, Part II, Ex. A).

C. Procedural History Of This Litigation.

1. *Invalidation of the 1962 and 1967 Reapportionment Acts.*

In 1965 private plaintiffs filed this suit alleging that the 1962 apportionment of the legislature violated the Fourteenth and Fifteenth Amendments (I A. 37-46). In July 1966, the three-judge district court invalidated the 1962 apportionment on the ground that it violated the Fourteenth Amendment's one-person, one-vote requirement.[12] *Connor* v. *Johnson,* 256 F. Supp. 962. That same year, the legislature enacted a new plan, and on March 3, 1967, the court again held that plan unconstitutional on malapportionment grounds and reapportioned the Senate and House of Representatives for the 1967 elections. 265 F. Supp. 492.

Thirty-four of the 52 House districts and ten of the 36 Senate districts were multi-member under this court plan (*id.* at 495-497).

2. *The 1971 temporary plan ordered by the district court.*

In 1971, the state enacted another reapportionment plan. That plan was held unconstitutional on May 18, 1971, because the court found no rational basis for the population variances among the legislative districts. *Connor* v. *Johnson,* 330 F. Supp. 506. The

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[12] Under the 1962 legislative plan a majority of the House of Representatives could be elected by 40.361 percent of the total population of the state; a majority of the Senate could be elected by 37.199 percent of the population. *Connor* v. *Johnson, supra,* 256 F. Supp. at 963.

district court then formulated a plan to govern the 1971 elections. *Ibid.*

Most of the House districts and almost half of the Senate districts were constituted as multi-member districts. *Id.* at 509-518.

The 1971 court-formulated plan was not final with respect to three counties: Hinds, Harrison, and Jackson. *Id.* at 519. Those counties accounted for one-fifth of the seats in both houses of the legislature. *Id.* at 509-518. Although the district court expressed reservations concerning multi-member districts in those counties, each of which would elect four or more senators or representatives, it concluded that there was not sufficient time before the 1971 elections to subdivide the counties into single-member districts. *Id.* at 519. The court stated that it expected to appoint a special master to determine whether such subdivision would be feasible for the 1975 and 1979 elections. *Ibid.*

On plaintiffs' motion, this Court stayed the district court's judgment until June 14, 1971. *Connor* v. *Johnson*, 402 U.S. 690. It directed the district court "absent insurmountable difficulties, to devise and put into effect a single-member district plan for Hinds County by that date." *Id.* at 692. The district court did not divide Hinds County into single-member districts, however, because it found that there were insurmountable difficulties. *Connor* v. *Johnson*, 330 F. Supp. 521.

After the 1971 elections, this Court considered on direct appeal plaintiffs' challenge to the 1971 court-

formulated reapportionment plan. *Connor* v. *Williams*, 404 U.S. 549. Noting with approval that the district court had retained jurisdiction over plans for Hinds, Harrison and Jackson Counties and had stated that a special master would be appointed in January 1972 to consider subdividing those counties into single-member districts, this Court directed that "[s]uch proceedings should go forward and be promptly concluded." *Id.* at 551. This Court declined to consider the prospective validity of the 1971 plan until proceedings were completed in the district court and a final judgment was entered respecting the entire state. *Id.* at 551-552. Without disturbing the 1971 elections, this Court vacated the district court's judgment and remanded the case for proceedings consistent with its opinion. *Id.* at 552.

The district court did not appoint a special master. *Connor* v. *Coleman*, 425 U.S. 675, 676.

3. *This Court's reversal of the district court's approval of the 1975 legislative plan.*

In April 1973 the Mississippi legislature adopted a new reapportionment plan. *Connor* v. *Waller*, 396 F. Supp. 1308, 1310. Plaintiffs filed timely objections to the 1973 plan and requested a hearing. *Ibid.* The hearing was held in February 1975. 396 F. Supp. at 1310. After the hearing, the legislature, in April 1975, adopted a reapportionment, *id.* at 1311, differing from the 1971 court-formulated plan only with respect to Harrison, Hinds, and Jackson Counties, *id.* at 1317. Despite the changes, these counties remained multi-member districts, *id.* at 1336, 1338.

a. *The 1975 legislative plan.*

The 1975 legislative plan contained 24 multi-member districts and 34 floterial districts and subdistricts (see pp. 60-61 n. 53, *infra*) (396 F. Supp. at 1333-1339) for the House and 14 multi-member districts for the Senate (396 F. Supp. at 1340). This plan adhered to county boundaries (*id.* at 1314-1316). Of the 82 counties in Mississippi, 17 have black voting age majorities.[13] In the House plan, nine of these counties were combined with white majority counties to form ten white majority districts and subdistricts and three black majority districts and subdistricts. Two of these three black majority districts were less than 51 percent black. Five of the 17 black majority counties were combined to form four black majority districts, and three black counties were constituted as single-member districts. In the Senate plan, 13 of the black majority counties were combined with white majority counties to form six white majority districts and two black majority districts, one of which was less than 51 percent black. Two black majority counties were combined to form one black majority district, and two black majority counties were constituted as districts (see Brief App. A at 19a-27a).

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[13] Unless otherwise indicated, we have used voting age population (VAP) statistics, to measure dilution of black voting strength (see pp. 51-52, *infra*). Differences between our VAP figures and those of plaintiffs are attributable to their use of 1975 projections rather than 1970 census figures.

b. *Reversal of the district court's approval.*

The district court dismissed plaintiffs' complaint and directed the filing of an amended complaint addressing the 1975 legislation. 396 F. Supp. at 1311. Plaintiffs' promptly filed an amended complaint, and in May 1975 the district court entered judgment approving the 1975 legislative plan. *Connor* v. *Waller*, 396 F. Supp. 1308.

On June 5, 1975, this Court reversed that judgment. *Connor* v. *Waller*, 421 U.S. 656. It held that the 1975 legislative acts would not be effective as laws until they were cleared in accord with Section 5 of the Voting Rights Act of 1965, 79 Stat. 439, as amended, 42 U.S.C. 1973c, and that the district court erred in deciding constitutional challenges to the acts based upon claims of racial discrimination. The reversal of the district court decision was, however (421 U.S. at 656-657):

> without prejudice to the authority of the District Court, if it should become appropriate, to entertain a proceeding to require the conduct of the 1975 elections pursuant to a court-ordered reapportionment plan that complies with this Court's decisions in *Mahan* v. *Howell*, 410 U.S. 315 (1973); *Connor* v. *Williams*, 404 U.S. 549 (1972); and *Chapman* v. *Meier*, 420 U.S. 1 (1975).

On June 9, 1975, Mississippi submitted the 1975 acts to the Attorney General for his consideration

under Section 5. The Attorney General, on June 10, 1975, interposed an objection to the acts on the ground that Mississippi had failed to show that they did not have the purpose and would not have the effect of denying or abridging the right to vote on account of race. *Connor* v. *Coleman, supra,* 425 U.S. at 677.

4. ***The 1975 temporary plan and the district court's intent to adopt a final plan.***

a. *Objections to reliance on the 1971 court-ordered temporary plan and the 1975 legislative enactment.*

The United States was permitted to intervene as party plaintiff on June 11, 1975 (II A. 128).[14] The district court then held a hearing on June 20, 1975, to determine under what plan the 1975 elections should be held (I A. 23). The original plaintiffs and the United States objected to the composition of certain legislative districts as drawn in the 1971 court plan and the 1975 legislative plan on the ground that those districts unconstitutionally diluted black voting strength (R. Doc. 175, Hearing of June 20, 1975, Tr. at 35, 66). The original plaintiffs also objected to the inclusion of multi-member districts in a court-fashioned plan and to malapportioned districts (*id.* at 67).

[14] The government's complaint in intervention invoked 42 U.S.C. 1971(a)(1) and (c), 1973, 1973c, 1973j(d), and 2000h-2 (II A. 129).

In an order dated June 25, 1975, the district court advised the parties that it intended to formulate a "temporary plan for the election of Senators and Representatives for 1975 elections ONLY," finding that there was insufficient time to formulate a final plan prior to the August 1975 primaries (II A. 178, 179). The court stated, however, that it intended without unnecessary delay to formulate a permanent plan for the election of legislators in the quadrennial elections of 1979. "When that shall have been accomplished, special elections may be ordered in those legislative districts where required by law, equity, or the Constitution of the United States" (II A. 180).

The court also requested that the parties amplify their objections to the existing plans before it implemented a temporary plan (II A. 179). After the parties did so, the court, by orders dated July 8, 1975, and July 11, 1975, formulated the temporary plan (II A. 183-206, 207-238). The court also ordered the parties to file alternative plans for the permanent reapportionment of the state legislature (II A. 237).

b. *The 1975 temporary plan.*

The temporary plan (II A. 207, 227-236) was similar to the 1971 court-ordered plan—vacated by this Court so that a final plan could be formulated—and to the 1975 legislative plan—objected to by the Attorney General under Section 5. Only eight districts were altered. The plan for the Senate contained 12 multi-member districts, electing 48.08 per-

cent of the Senate membership (25 of 52 Senators). For the House 21 of 84 districts were multi-member, electing 42.62 percent of the House membership (52 of the 122 representatives). Five of the Senate districts, electing 8 of 52 senators, had black voting age population majorities. In the House, 14 of the 84 districts, electing 22 of the 122 representatives, had black voting age majorities.

5. *Postponement of the district court's final plan.*

The original plaintiffs, on July 21, 1975, and the United States, on July 24, 1975, filed motions to alter or amend judgment, pursuant to Rule 59, Fed. R. Civ. P. (II A. 239-251, 252-253). Both motions requested that the district court establish a specific date by which a final plan would be established and a definite schedule for special elections (II A. 239, 252). Private plaintiffs asked the district court to order into effect a final plan by February 1, 1976, and to order such special elections as are necessary to cure defects in the temporary plans, such elections to coincide with the November 1976 presidential elections (II A. 239). As grounds for those motions, the plaintiffs detailed the legal deficiencies they found in the temporary plan (II A. 239-250).

By order of August 1, 1975, the district court ruled on plaintiffs' motions (II A. 245-255). While declining to establish a deadline for approval of a final plan, the court emphasized "its firm determination to have this matter out of the way before February 1, 1976," and its expectation that it would

"direct that [any required special elections] shall be held in conjunction with the 1976 Presidential election so as to save the expense of special elections, as far as possible" (*ibid.*).[15]

In October 1975, private plaintiffs and the United States submitted proposals for a final plan (I A. 28; III A. 1-77). On October 24, 1975, the district court ordered the United States to compile and submit to the court data respecting the November elections (R. Doc. 207). Upon filing those data, the United States moved, on January 26, 1976, to establish February 10, 1976, as the date for a hearing on the proposed final plan (III A. 78). The court, on January 29, 1976, denied the motion, deferring further hearing and decision until this Court ruled in three then-pending cases (III A. 79-80).[16]

6. *This Court's direction that the district court adopt a final plan.*

Thereafter, plaintiffs sought a writ of mandamus to vacate the district court's stay order of January 29, 1976, and to compel the district court to formu-

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[15] In light of the proximity of the August 12 primary elections, the district court's indication that it intended to take prompt action on formulation of a final plan and scheduling of special elections, if necessary, and this Court's prior indication, in *Connor* v. *Williams, supra,* that it wished to rule only on a final plan, the United States did not appeal from the district court's order establishing a temporary plan.

[16] *United Jewish Organizations of Williamsburgh, Inc.* v. *Carey,* No. 75-104, certiorari granted, 423 U.S. 945, argued October 6, 1976; *Beer* v. *United States,* 425 U.S. 130; *East Carroll Parish School Board* v. *Marshall,* 424 U.S. 636.

late promptly a reapportionment plan and to order necessary special elections to coincide with the November 1976 presidential and congressional elections. Finding no justification for the district court's delaying further a final decision in this case, this Court instructed the district court to proceed to trial forthwith, to schedule a hearing within 30 days on all proposed final reapportionment plans, so that a final plan could be effective for the 1979 elections, and to order any necessary special elections to coincide with the November 1976 elections or "at the earliest practicable date thereafter." *Connor* v. *Coleman*, 425 U.S. 675, 679.

7. *The district court's final judgment.*

The district court held the required hearing on June 15, 1976 (R. Doc. 225). It devised a new plan for the Senate on August 24, 1976 (III A. 94-116), and for the House of Representatives on September 8, 1976 (III A. 117-138). The district court entered its final judgment (revising its August and September plans in some districts) on November 18, 1976 (III A. 232-248). The plans were further revised by an order amending final judgment entered on December 21, 1976 (III A. 279-282).

The 1976 plan is not effective until the legislative elections of 1979 which will elect members of the 1980 legislature. It establishes single-member districts for both the House and Senate. In the meantime the Mississippi legislature elected under temporary plans adopted in previous litigation, which provided for multi-member districts, continues to sit;

the current session began January 4, 1977. The district court, however, ordered special elections in only two of Mississippi's 122 House districts and none for any of the 52 Senate districts (III A. 247).

D. The District Court's Plan.

The decision of August 24, 1976, set forth the court's criteria for decision and its reapportionment of the Senate (III A. 94-116).[17]

1. *The district court's criteria for decision.*

The court concluded that it would prescribe a reapportionment based on single-member districts (III A. 98). As a result, because of demographic factors, it could not assign one House member to each county, as provided in Miss. Const. Art. 13, § 254, or adhere to the State's traditional practice of apportioning Senate seats within districts based on counties as a whole. The court endeavored, however, to conform its plan to state policy as closely as possible, by defining districts by counties or, where necessary counties plus "beats" (the five county-supervisor election districts in each county) and voting precincts from other counties (III A. 96-97). The court relied upon population figures from the 1970 census (III A. 101). In dealing with possible dilution of black voting strength, it also relied upon general population data, rather than data showing comparative black and white voting age population (*ibid.*).

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[17] In formulating its plans, the court was assisted by reports from two special masters of October 7, 1976 (III A. 177-181) and December 8, 1976 (III A. 261-278).

Population variances were to be "as near *de minimis* as possible" in light of the problems encountered in trying to devise districts of equal population which also conform to county, beat and precinct lines (*ibid.*). The court stated that it would not depart from those guidelines except where necessary "to attain reasonable contiguity, a tolerable equality of population, or an acceptable degree of compactness" (*ibid.*).

With respect to dilution of black voting strength, the court stated (*id.* at 101):

> There shall be no minimization or cancellation of black voting strength. Any apparent dilution in any particular locality will occur only when dictated by the necessity for drawing district lines so as to adhere as closely as reasonably possible to the population norm while maintaining contiguity and a reasonable degree of compactness.

2. *The Senate and House plans.*

The district court's final judgment reapportions the state into 122 single-member House districts and 52 single-member Senate districts. Nine Senate districts have black voting age population majorities, of which four have black majorities of 54 percent or more. Twenty-four of the House districts have black voting age population majorities, seventeen of which exceed 54 percent.

Of the several alternative plans presented by the plaintiffs and the United States,[18] the district court briefly noted two of the plans submitted by plaintiffs (III A. 100). It gave no reason for rejecting the various alternatives offered for particular areas where the court's plan divided black population concentrations among majority white districts. The opinion does not explain the method by which the plan was devised, nor does the record show the statistical foundation for the plan or for any reports made to the court by the Special Master.

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[18] Private plaintiffs presented a number of statewide plans for the House and Senate, including the Valinsky Plan (I A. 325-345, 346-359), Henderson plan (R. Docs. 140, 151; Exh. P-8 to May 7, 1975 Hearing, Deposition and Supporting Exhibits Nos. 2-7 of Dr. Gordon Henderson), Kirksey Plan (I A. 410-418, 419-435), County Boundary Plan (R. Doc. 205, Plaintiffs' Submission of Permanent Legislative Reapportionment Plans, at Ex. 1) and Minimum Fractionalization Plan (R. Doc. 211, Plaintiffs' Supplemental Submission filed Feb. 9, 1976). The United States also submitted three statewide plans for the House and Senate: State Modified Plan (II A. 135, 139-146, 165-167), Restricted Fractionalization Plan (III A. 1, 47-52, 55-71) and County Boundary Plan (III A. 1, 24-29, 33-41). In addition both private plaintiffs and the United States submitted alternatives to individual districts contained in the court plan (*e.g.*, III A. 160-168, 206-219). Private plaintiffs also submitted four additional plans for districting of Hinds County, Sweeney Plan (R. Doc. 151, Deposition of Harold E. Sweeney, Exh. P-6 at Ex. 2), Census Tract Senate Plan (R. Doc. 151, Exh. P-14), Mitchell Plan (R. Doc. 179, Plaintiffs' Supplemental Submission on Hinds County Single-Member Plans at Exs. A & B), Kirksey Plan (R. Doc. 244, Plaintiffs' letter of October 19, 1976 to Judge Coleman at Exh. C). Most of these plans are summarized in R. Doc. 179.

3. *Alternative plans offered by the plaintiffs.*

Plaintiffs and the United States submitted requests for modifications in the plan for the Senate announced in the judgment dated August 24, 1976, and in the plan for the House contained in the judgment dated September 8, 1976. Plaintiffs submitted a different plan for the Senate (the Modified Henderson Plan A) which would, they alleged, result in less population deviation and racial dilution than the court plan (III A. 182-183). For the House, plaintiffs requested alterations in 19 districts (III A. 191-196). The United States objected to 11 Senate districts [19] and 34 House districts [20] as unnecessarily diluting black voting strength (III A. 206-207, 208-212).

In a Motion to Alter and Amend Judgment and Plaintiffs' Objections to 1976 Court-ordered Legislative Reapportionment Plan, filed September 20, 1976, plaintiffs moved that the court "[o]rder a hearing on plaintiffs' objections to the court-ordered Senate and House plans" (III A. 160, 166). On September 23, 1976, Circuit Judge Coleman wrote a letter to counsel for plaintiffs asking that an "informal conference" between the counsel and the judges be held instead

[19] Senate districts to which the United States objected were: 2, 12, 14, 16, 17, 19, 22, 29, 37, 38 and 39 (III A. 207).

[20] House districts to which the United States objected were: 8, 15, 16, 32, 33, 34, 35, 36, 37, 38, 47, 53, 54, 55, 56, 60, 78, 79, 80, 86, 87, 88, 89, 92, 93, 94, 95, 100, 101, 102, 103, 104, 105, 106 (III A. 208-212). Objections to 22 of these districts (8, 15, 33, 38, 47, 53, 55, 56, 60, 78, 80, 86, 87, 88, 93, 95, 10[illegible], 101, 102, 104, 105, 106) were based not on dilution in the districts, but on the effect that changes in the 12 districts where dilution did exist would have on them.

of the hearing requested by plaintiffs' counsel (R. Doc. 237 at p. 2). An informal conference was held on October 7, 1976 (I A. 33; III A. 197), but no formal hearing on the parties' objections to the court's Senate and House plan was ever conducted.

4. *Modifications of the plan by the district court.*

On November 12, 1976, the court "amended" the plan for the House, changing 11 districts to "improve upon discrepancies involving contiguity and population" (III A. 221). This modification remedied the dilution in one House district to which the United States had objected.[21]

The court entered final judgment on November 18, 1976 (III A. 232-248), and plaintiffs, on November 29, 1976, moved to alter or amend judgment, and for a hearing on their objections to the plan (III A. 250-258). They asserted that the court had based its population statistics for the Senate and House plans "on the votes received by the Democratic candidates for Governor in the August 5, 1975 Democratic primary election," and that the plans were malapportioned and diluted black voting strength in certain respects (III A. 250-251). On December 17, 1976, Judge Coleman, through the clerk of the court, sent to counsel for the parties a report of the Special Master, dated December 8, 1976. That report (III A. 261-278) analyzes plaintiffs' (but not the United

[21] Dilution was remedied in House District 16, thereby eliminating any need to alter Districts 8 and 15 to which the United States had objected only because of their relationship to District 16.

States') objections to the final plan.[22] The report indicates that the election returns were used in the court's population estimates, but does not explain how (*id.* at 261-262).

On December 21, 1976, the court modified its final plan with respect to two Senate districts and nine House districts (III A. 279-282). These changes did not materially affect the dilution question in any district.

E. Requests For Special Elections.

Following announcement of the Senate plan the United States requested special elections in eight[23] (III A. 169, 172) and the original plaintiffs in thirteen[24] (III A. 139, 140) Senate districts. Following announcement of the House plan, the United States requested special elections in 27[25] (III A. 172, 212) and the plaintiffs in 41[26] House districts (III

[22] As to plaintiffs' request for a hearing, the report states "[t]his is for the Court to determine" (III A. 261).

[23] Initially the United States requested special elections in 14 Senate districts, but later amended that request to call for special elections in the following eight districts: 14, 15, 16, 17, 28, 29, 38, and 39 (III A. 169-172).

[24] The Senate districts for which plaintiffs requested special elections were: 12, 13, 14, 15, 16, 17, 28, 29, 38, 39, 41, 42, and 43 (III A. 139-140).

[25] The House districts in which the United States requested special elections are: 3, 8, 10, 15, 16, 17, 22, 24, 25, 26, 32, 33, 34, 37, 38, 47, 52, 56, 57, 79, 81, 82, 89, 97, 103, 105 and 115 (III A. 169, 173). Initially, the United States also sought a special election for districts 48 and 49, but it later withdrew that request (III A. 212).

[26] The House districts in which the plaintiffs sought special elections are: 3, 4, 6, 8, 10, 11, 15, 16, 17, 20, 22, 24, 25, 26,

A. 146-159). Defendants contended that no special elections were required for either chamber (Supp. A. 116a).

The district court ruled that "the only available thesis for ordering special elections in any of the newly formulated legislative districts would be where required to remedy any impermissible dilution of black voting strength in the temporary plan when compared with the permanent plan established for the 1979 elections" (III A. 224). The court declined to order any special elections for the Senate because every newly created senatorial district "with a black population majority was part of a black majority district in 1975" (III A. 226). For the House, the court ordered special elections in only two districts—79 and 97 (*id.* at 227-228). The court rejected special elections in other House districts requested by plaintiffs and the United States because (1) the areas comprising some new districts were in districts which had black population majorities under the temporary plan used for the 1975 elections; (2) special elections in some newly created black population majority districts could necessitate special elections in other districts because their representation would be affected; or (3) in the case of district 3, a white candidate received more votes than a black candidate in the 1975 general election in the precincts included within the new district (*ibid.*).

27, 30, 32, 33, 34, 37, 38, 44, 47, 52, 53, 54, 56, 74, 75, 79, 81, 83, 88, 89, 93, 95, 97, 98, 99, 113, and 115 (III A. 146).

The court declined to set "dates for special legislative elections until time for an appeal has expired or until the Supreme Court shall have decided an appeal on the merits" due to the possibility that this Court might later disapprove the reapportionment plan (III A. 230).

SUMMARY OF ARGUMENT

I

The district court's final plan is not a proper equitable remedy because it perpetuates the effects of past racial discrimination in Mississippi voting and reapportionment.

A. When a district court formulates a reapportionment plan, as a court of equity, it has a greater responsibility to ensure that its plan does not infringe voting rights than does a state legislature. *Chapman* v. *Meier*, 420 U.S. 1, 27. The Court has recognized, in cases involving legislatively adopted reapportionments, that multi-member districts may operate to minimize or cancel out the voting strength of racial or political elements in the voting population. *E.g.*, *Fortson* v. *Dorsey*, 379 U.S. 433, 439; *Whitcomb* v. *Chavis*, 409 U.S. 124, 143, 149-150; *White* v. *Regester*, 412 U.S. 755, 765-766. Because of this characteristic, court-ordered reapportionment plans may not utilize multi-member districts absent special circumstances. *East Carroll Parish School Board* v. *Marshall*, 424 U.S. 636, 639. The effectiveness of this criterion would be defeated, however, if single-member districts caused the very dilution the restriction on

multi-member districts is intended to avoid. Since improperly drawn single-member districts have the same potential as multi-member districts for submerging political or racial minorities, the same equitable standards should apply.

B. The past history of disfranchisement of blacks in Mississippi by devices designed to directly bar them from participating in the political process has been reinforced in Mississippi by apportionment plans designed to minimize or cancel the potential voting strength they have acquired as a result of recent efforts to give effect to the Fifteenth Amendment. The effects of the past discrimination have continued to the present day. It is intensified, in Mississippi, by the pattern of racial bloc voting which is a legacy of the discriminatory practices that pervaded public life in Mississippi. Blacks, and non-blacks sympathetic to black interests, presently have no prospect of being elected in white majority districts. Thus, although blacks as individuals may now stand for office or vote as electors without having to overcome the personal barriers erected in the past, they cannot collectively influence elections in white majority districts. While they have no right to have a black candidate elected, they have the right to an equal opportunity to elect a candidate who will represent their interests. Accordingly, to the extent that concentrations of black voters are unnecessarily submerged in white majority districts, in the context of historical discrimination and current patterns of racial bloc voting shown here, the pre-existing dilution of black voting strength is perpetuated.

C. In formulating its remedy, the district court should have avoided such unnecessary fragmentation of black voting concentrations. To do this, it should have first determined dilution on the basis of voting age population (VAP); this measure serves as a current indicator of the group's potential access to the political process. It then should have recognized that, in the circumstances here, the past history of discrimination operates as a disincentive to black voting participation, and consequently that, in preserving black voting concentrations, more than a bare black majority VAP is necessary to assure Mississippi blacks a meaningful opportunity to assert their voting potential. A practical measure for determining whether black voting potential has been diminished is the proportion of the number of seats with respect to which blacks would have a reasonable chance to be successful in an election, compared with their proportion of the voting age population. Cf. *Beer* v. *United States*, 425 U.S. 130, 137.

D. The district court, however, did little more than state, as a guideline, that black voting strength should not be minimized or cancelled; list the racial composition by population of the various Senate districts it created; and list some thirty black majority House districts it was establishing. Its findings do not indicate consideration of the dilution problem, racial bloc voting or the significance of voting age population. And because the district court's plan fails to avoid unnecessary fragmentation of black voting strength, it is an insufficient remedy

for the past discrimination shown here in apportionment of the legislature.

E. That unnecessary fragmentation occurred because of the district court's failure to recognize the dilutive effects of its own 1975 temporary plan. That plan was an adaptation of the 1975 legislative plan —whose implementation had been barred under Section 5 of the Voting Rights Act of 1965—and the 1971 court-ordered plan this Court had ordered vacated so that a permanent plan could be formulated.

A discriminatory pattern is discernible in the 1975 legislative plan. It contained a substantial number of multi-member districts in both the House and Senate. Although there were 17 counties with black majority VAP, only 10 House districts and five Senate districts had black VAP majorities (which were in some instances very slight). This was because black majority counties were combined with white majority VAP counties to form 21 House and Senate districts and subdistricts. Only five of those 21 districts and subdistricts had black VAP majorities, and three of those five were only slightly more than 50 percent black.

The 1975 temporary plan did not significantly differ. It continued to utilize multi-member districts, and treated 15 of the 17 black majority counties in the same way as the legislative plan.

The court's final plan eliminated unnecessary dilution in many districts by creation of single-member districts throughout the state. But it failed to remedy such dilution in six counties for which alterna-

tive plans, that met the requirements of contiguity, compactness and minimum population variance, were available.

In three of those counties—Hinds, Warren, and Forrest—blacks constitute a sizeable minority of the population and a substantial number are geographically concentrated in and around the major cities of Jackson, Vicksburg, and Hattiesburg. But the final plan drew district lines so as to divide and separate these concentrations, thus submerging them in white majority districts. In a fourth county—Washington—the lines were drawn to produce a black VAP majority so slight that the effects of past discrimination will continue to prevent effective assertion of black voting strength. In Claibourne County a black majority VAP has been submerged in a white majority. In Jefferson County the lines have been drawn to create a black majority VAP so slight as to be ineffective.

II

Because the final plan adopted by the district court is not to be implemented until the 1979 elections for the 1980 legislature, Mississippi will continue to be governed by the legislature elected under the 1975 court-ordered temporary plan. That plan diluted black voting strength unnecessarily, particularly through the use of multi-member districts, and failed to remedy the effects of past discrimination and racial bloc voting in Mississippi. If special elections are not held in districts in which the final plan remedies the deficiencies of the prior plan, the effects of

past disfranchisement of blacks will continue until the quadrennial election for the 1980 legislature.

The district court ordered special elections in only two House districts. It should have ordered elections in additional districts on the basis of two equitable considerations. First, special elections should be held in all districts that were changed from majority white to majority black districts. Second, considering the uncontradicted evidence of racial bloc voting, special elections should also be held where a significant increase in black VAP in a district, combined with the change from a multi-member to single-member district, will permit blacks to have a full and fair opportunity to vote for representation of their choice in the current legislature. Otherwise the exaggerated influence of white voters in those districts will continue in the legislature until 1980.

ARGUMENT

I. THE DISTRICT COURT'S FINAL PLAN IS NOT A PROPER EQUITABLE REMEDY BECAUSE IT PERPETUATES THE EFFECTS OF PAST RACIAL DISCRIMINATION IN MISSISSIPPI VOTING AND LEGISLATIVE APPORTIONMENT.

A. Court Ordered Reapportionment Plans May Not Unnecessarily Dilute Minority Voting Rights Or Cancel Minority Voting Strength.

The authority of the district court to formulate the reapportionment plan under review rests upon its remedial power, as a court of equity, to prescribe a reapportionment plan because the state legislature

has failed to adopt a plan which meets constitutional requirements. See *Chapman* v. *Meier*, 420 U.S. 1, 27. When a court is called upon to formulate a plan, it has a "greater responsibility," *id.* at 26, in exercising its equitable powers, to ensure that the resulting plan does not have the potential to infringe voting rights.

Reapportionment, of course, is primarily a legislative responsibility. *Reynolds* v. *Sims*, 377 U.S. 533, 586; *Chapman* v. *Meier*, *supra*, 420 U.S. at 27. In performing that function, a state has discretion to weigh the many political, social, planning, and practical objectives that go into formulating an apportionment plan, and strike an appropriate balance among the various competing considerations. See *Mahan* v. *Howell*, 410 U.S. 315, 324-325. However, a state statute regulating the franchise is also subject to exacting judicial scrutiny. "[A]ny alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized." *Reynolds* v. *Sims*, *supra*, 377 U.S. at 562.

Judicial scrutiny of a legislative reapportionment is limited to determining whether it meets constitutional requirements.[27] In contrast, a reapportionment

[27] Of course, in those states and political subdivisions, like Mississippi, which are covered jurisdictions within the meaning of Section 4 of the Voting Rights Act of 1965, 42 U.S.C. 1973b, a legislative reapportionment plan is also subject to the procedural requirement and substantive standards of Section 5 of that Act. See *Georgia* v. *United States*, 411 U.S. 526. That Act bars covered jurisdictions from making changes in voting laws or procedures effective until the change has been precleared by the Attorney General or judicially declared to be without discriminatory purpose or effect. Such a declaration may be made only by a three-judge district court in the District of Columbia. *Connor* v. *Waller*, 421 U.S. 656; *Perkins* v. *Matthews*, 400 U.S. 379.

plan formulated by a district court is subject to more intense scrutiny. A "court-ordered plan * * * must be held to higher standards than a State's own plan." *Chapman* v. *Meier*, *supra*, 420 U.S. at 26.[28] This Court has applied that principle with respect to population inequality among districts and the use of multi-member districts in court-ordered plans.[29]

In the context of cases involving legislatively-adopted multi-member district plans, this Court has stated that voting rights are impaired when it is shown that an apportionment scheme "designedly or otherwise * * * under the circumstances of a particular case, would operate to minimize or cancel out

[28] See also, *Wallace* v. *House*, 425 U.S. 947, in which the Court vacated, for reconsideration in light of *East Carroll Parish School Board* v. *Marshall*, 424 U.S. 636, a court of appeals decision that required district courts, in prescribing their own plans, to accept the proposals of the defendant jurisdiction unless those proposals were unconstitutional. 515 F. 2d 619, 634 (C.A. 5). The court of appeals had reversed a district court decision rejecting a proposal by the jurisdiction for a redistricting plan under which one of five aldermen would have been elected at-large.

[29] Although a plan enacted by a state legislature which contains a population variance of as much as 9.9 percent is not *prima facie* unconstitutional (*Chapman* v. *Meier*, *supra*, 420 U.S. at 23), a court-ordered plan "must ordinarily achieve the goal of population equality with little more than *de minimis* variation" and "must avoid use of multimember districts * * *." *Id.* at 27.

the voting strength of racial or political elements of the voting population." *Fortson* v. *Dorsey*, 379 U.S. 433, 439; *Burns* v. *Richardson*, 384 U.S. 73, 88; *Whitcomb* v. *Chavis*, 403 U.S. 124, 143; see *White* v. *Regester*, 412 U.S. 755, 765. Such dilution is established when the complaining minority group proves that the legislative plan denied it equal access to the political process, that is, where "its members had less opportunity than did other residents in the district to participate in the political processes and to elect legislators of their choice." *White* v. *Regester*, *supra*, 412 U.S. at 766; see *Whitcomb* v. *Chavis*, *supra*, 403 U.S. at 149-150. In contrast, a district court abuses its discretion "in shaping remedial relief" by adopting a multi-member district plan absent "special circumstances" that dictate use of such a districting scheme. *East Carroll Parish School Board* v. *Marshall*, 424 U.S. 636, 639. See also *Chapman* v. *Meier*, *supra*, 420 U.S. at 26-27; *Mahan* v. *Howell*, 410 U.S. 315, 333; *Connor* v. *Johnson*, 402 U.S. 690, 692; *Connor* v. *Williams*, 404 U.S. 549, 551.[30] Moreover, this remedial standard is not dependent upon a showing that the multi-member districting at issue would be unconstitutional in itself or would discriminate against "any racial or political group * * *." *Chapman* v. *Meier*, *supra*, 420 U.S. at 19. "Absent particularly pressing features calling for multi-

[30] Cf. *City of Petersburg* v. *United States*, 354 F. Supp. 1021 (D. D.C.), affirmed, 410 U.S. 962; *City of Richmond* v. *United States*, 422 U.S. 358.

member districts," they are not to be used in court-ordered plans. *Ibid.*

A multi-member electoral scheme, such as that in *White* v. *Regester*, *supra*, may submerge minorities in districts controlled by whites, thereby denying those minorities an equal opportunity to participate in the electoral process. Under such a scheme, the minority voters may not be able to exert their fair influence in the electoral process.[31] While this problem has been alleviated in the context of court-ordered plans by this Court's decisions disfavoring the use of multi-member districts, those decisions would be of little effectiveness in protecting minority voting rights

[31] The most explicit description of dilutive voting practices is provided by *Graves* v. *Barnes*, 343 F. Supp. 704 (W.D. Tex.), affirmed by this Court in *White* v. *Regester*, *supra*. In *White*, the Court upheld the ruling of a three-judge district court that the multi-member districts for the Texas House of Representatives in Dallas and Bexar counties operated to dilute the voting strength of minorities in those counties. In Bexar County, where the district court found that Mexican-Americans share a common heritage of discrimination, *Graves* v. *Barnes*, *supra*, 343 F. Supp. at 727-729, causing them to register and vote in lower numbers than Anglo-Americans, *id.* at 733, bloc voting "[froze] [Mexican Americans] into permanent political minorities destined for constant defeat at the hands of controlling political majorities." *Id.* at 732. Since Mexican-Americans were "[deprived] * * * of a reasonable chance to be successful," *id.* at 734, their candidates were not elected to the legislature and their interests were not adequately represented. *Id.* at 732. This Court affirmed the district court's conclusion that the electoral scheme operated to minimize or cancel out the voting strength of the minority by denying them an opportunity to participate equally in the political processes and to elect legislators of their choice. *White* v. *Regester*, *supra*, 412 U.S. at 765-766.

if the single-member districts created in such plans did not permit the minority a fair opportunity to realize their potential influence.

Improperly drawn single-member districts have the same potential as multi-member districts for submerging a racial minority. Where there is a substantial black population which is geographically concentrated and, therefore, has the potential to have an influence on the choice of one or more legislators, a single-member districting plan which fragments that population among several white-dominated districts submerges the black voters to the same extent as would a multi-member plan. See *Taylor* v. *McKeithen*, 407 U.S. 191; *Howard* v. *Adams County Board of Supervisors*, 453 F. 2d 455 (C.A. 5), certiorari denied, 407 U.S. 925. For example, the black voters of Hinds County constituted a 34 percent voting age population minority in the multi-member district electing five senators at-large under the state's 1975 plan. Although the county has been divided into five single-member districts, blacks have been divided among all five districts and are in the minority of those of voting age in each. They thus are still unable to realize their fair potential to influence the outcome of elections.[32] The injury is the same whether it is accomplished by use of multi-member or single-member districts. Since a single-member districting scheme which, in the context of

[32] The Senate districts in Hinds County are discussed at length at pp. 75-82, *infra*.

demonstrated tendencies of racial bloc voting, fragments a substantial black population and submerges it in several white majority districts, has the same potential for diluting black voting strength as does the use of multi-member districts, the same equitable standards should apply.

B. The Effects Of The Past Discrimination Against Blacks In The Electoral Process Continues Today.

1. *Racial bloc voting in Mississippi.*

The legacy of Mississippi's historical exclusion of blacks from the electoral process includes rigid patterns of racial bloc voting, a 97 percent white lower house and an all-white upper house (in the legislature of a state where more than 30 percent of the voting age population is black), a lower black than white political participation rate, and a correspondingly more difficult road for black than for white politicians. Plaintiffs' expert witnesses[33] presented the

[33] The plaintiffs introduced the testimony of the following witnesses concerning the behavior of black and white voters in the Mississippi electoral process:

(1) Dr. James W. Loewen, a political sociologist, who has observed the racial sociology of Mississippi since 1963 and has published two books on the subject (I A. 118-121).

(2) Dr. Gordon G. Henderson, a political scientist, who testified as an expert in the areas of computer science, political science and legislative reapportionment (II A. 1-5). He has specialized in research concerning Mississippi politics since 1963, particularly with respect to patterns of black and white voting and the

district court with uncontroverted evidence that the results of Mississippi elections are governed by racial bloc voting—that is that whites in Mississippi vote for white candidates and blacks for black candidates or candidates who represent their interests (I A. 108-110, 130-131, 184, 226-227, 362). This phenomenon is rooted in the history of prejudice and discrimination against blacks in the State of Mississippi (I A. 108), and has been an observable constant in Mississippi elections since at least 1967 (I A. 131) when blacks first began to be able to participate in the electoral process, as a result of passage of the Voting Rights Act of 1965. Analyses of elections in Mississippi show that racial bloc voting has occurred in dimensions of extreme statistical significance in statewide elections (I A. 127-131, 180), as well as in local elections (I A. 184). Whites will not vote for a black candidate (I A. 108, 130-131, 190, 226, 362), and blacks will generally not vote for a white candidate

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social and economic characteristics of bloc voting (I A. 158; II A. 2-5).

(3) Mr. Harold E. Sweeney, Jr., a political scientist, who has analyzed apportionment plans at the state and county levels in Mississippi (I A. 73-75).

(4) Mr. Henry J. Kirksey, a Mississippi politician, who has analyzed election results by precinct on a racial basis in Hinds County for elections at the state, county and municipal levels since 1971 (R. Doc. 151, Hearing of May 7, 1975, Deposition of Henry J. Kirksey (Exh. P-7) at Exh. 1).

(5) Mr. Rims Barber, a politically involved citizen, who has analyzed the racial characteristics of Mississippi elections since 1965 (I A. 222-226).

who has a black opponent (I A. 130, 180, 190, 197).[34] As a result, it is unlikely that under existing conditions there could develop a coalition between blacks and whites in support of a black candidate in state or local elections in Mississippi (I A. 131, 184). And, significantly, blacks do not presently have a realistic opportunity to be elected to office in majority white districts (I A. 110; II A. 90).

2. *The past as a disincentive to black political participation.*

The history of racial discrimination in the electoral process has acted as a powerful disincentive to black voter registration (II A. 100), and is reflected in the fact that black voter registration is significantly lower than white voter registration (I A. 227, 234-238). Although black registration has increased significantly since passage of the Voting Rights Act of 1965, it continues to lag behind that of whites in Mississippi. Only 62.2 percent of blacks of voting age in Mississippi were registered to vote in 1971-1972, as against 71.6 percent of whites.[35] Indeed, black registration has not yet attained the level of 1867 (Brief App. A at 1a n.1).

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[34] Although blacks vote for white candidates more often than whites vote for black candidates (I A. 226, 227; I A. 71, 108), the failure of whites to support blacks tends to result in black political impotence in white majority districts (see pp. 45-51, *infra*).

[35] Hearings on S. 407, S. 903, S. 1297, S. 1409, and S. 1443 before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary, 94th Cong., 1st Sess. 658 (1975).

Many of those who are registered do not vote in elections because they do not believe they can influence the outcome (I A. 181, 238). Moreover, older blacks, aware of the harsher forms of electoral discrimination against blacks, are afraid to register, and are afraid to vote once registered. Approximately 10-15 percent of blacks who are registered have never voted (I A. 228, 234-238).

Thus, for a variety of reasons, rooted in past discrimination, blacks in Mississippi have been discouraged from participation in the political process. Moreover, the relative economic disadvantage suffered by many Mississippi blacks further limits that participation.[36]

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[36] Black families are much poorer than white families in Mississippi (I A. 141, 386-387). 1970 Census figures show that 59.2 percent of black families and 15.9 percent of white families in Mississippi have incomes below the poverty level and that 45.7 percent of black families and 10.5 percent of white families in Mississippi earn less than 75 percent of the poverty level. United States Bureau of the Census, *Census of Population: 1970*, Vol. 1, *Characteristics of the Population*, Part 26, Mississippi, Table 58, pp. 26-168-169. This relative poverty manifests itself in a number of ways in the electoral process. It is generally much more difficult for black candidates to raise funds or to expend their own funds to campaign (I A. 386). Poverty also causes a lack of participation by black voters. Poor Mississippi blacks are educationally deprived and this contributes to their inability to realize the potential of the electoral process. Moreover, the fear of economic retribution acts as a disincentive to participation by poor blacks in the electoral process (I A. 234-239).

3. The effect of past discrimination on recent elections.

For the foregoing reasons, the ability of blacks to organize in support of candidates who will represent their interests is greatly curtailed. The electoral results confirm this observation. Although blacks constitute 36.8 percent of the state's total population and 31.4 percent of the state's voting age population, only one black was elected to the Mississippi legislature from Reconstruction until 1975, and he was elected to the House from a District which had a 59.4 percent black voting age population.[37] Three additional black candidates were elected in 1975 from heavily black House districts.[38] Black candidates ran in primaries in 10 House and Senate districts. Three black candidates lost elections in districts which had black voting

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[37] In 1971 Representative Robert G. Clark was elected in House District 16 (Holmes and Humphreys Counties). Blacks ran in 18 House and Senate districts in the 1971 General Election (R. Doc. 151, List of Black Candidates for State Legislative Offices, 1971, Nov. 2, 1971 General Election, Hearing of May 7, 1975, Exh. P-5).

[38] The representatives, the House districts from which they were elected, and the percentages of black voting age population in the districts are:

District 31C	Douglas Anderson	89.6 percent
District 31D	Horace Buckley	80.7 percent
District 31F	Fred Banks	75.2 percent

All three districts are parts of Hinds County, which was divided into twelve single-member House districts in 1975. (R. Doc. 209, Submission of the United States Pursuant to October 24, 1975 Court Order, at Chart No. 2, p. 3).

age populations between 44 percent and 48 percent.[39] Despite the recent slight increase in legislative representation, Mississippi has the lowest ratio of percentage of black legislators to percentage of black voting age population of any southern state.[40]

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[39] R. Doc. 209, Submission of the United States Pursuant to October 24, 1975 Court Order, Chart No. 6. Black candidates lost in Senate district 22A which had a 48 percent black voting age population and in House districts 30 and 31E which had black voting age populations of 44.3 percent and 44.1 percent, respectively. In addition, a black candidate ran and lost in House district 28 which is 61.1 percent black voting age population.

[40]

	Statewide [1] No. of Legislators	No. of [1] Black Legislators	% of Black Legislators	% of Black [2] Voting Age Population
Mississippi	174	4	2.3%	31.4%
Virginia	140	2	1.4%	16.6%
Arkansas	135	3	2.2%	15.4%
Florida	160	3	1.9%	12.5%
North Carolina	170	6	3.5%	19.4%
Louisiana	144	10	6.9%	26.6%
South Carolina	170	13	7.6%	26.3%
Georgia	236	22	9.3%	22.7%
Texas	181	9	5.0%	11.3%
Alabama	140	15	10.7%	23.0%
Tennessee	132	11	8.3%	13.9%

[1] Statistics based on 6 *National Roster of Black Elected Officials, Joint Center for Political Studies, Washington, D.C.* (August 1976).

[2] Population data based on 1970 Census.

Mississippi's lack of responsiveness to black voters is rooted in its history of official racial segregation, see *Adickes* v. *Kress & Co.*, 398 U.S. 144, 197-201 (Brennan, J., concurring in part and dissenting in part); *Stewart* v. *Waller*, 404 F. Supp. 206, 214 (N.D. Miss.); *United States* v. *City of Jackson, Mississippi*, 318 F. 2d 1, 5 (C.A. 5), which was "steelhard, inflexible

4. The dilutive impact of racial bloc voting on black voting rights.

Participation in the political process may be effectively thwarted in either of two ways: (1) by directly barring or discouraging participation in the choice of candidates or the election of officials through a closed nominating process or restrictions on registration or voting (see, *e.g.*, *Smith* v. *Allwright*, 321 U.S. 649; *Dunn* v. *Blumstein*, 405 U.S. 330; *Kramer* v. *Union Free School District No. 15*, 395 U.S. 621); or (2) by minimizing or nullifying participation through practices which dilute the effectiveness of that participation (see, *e.g.*, *Reynolds* v. *Sims*, 370 U.S.

[and] undeviating." The history of racially discriminatory voting legislation which extends even up until the 1975 legislative reapportionment (see Brief App. A) is but one example. A history of deliberate racial discrimination permeates all aspects of Mississippi life. The reluctance of the school boards of Mississippi to carry out this Court's mandate in *Brown* v. *Board of Education*, 349 U.S. 294 (*Brown II*), is well known to this Court. See *Alexander* v. *Board of Education*, 396 U.S. 19, vacating and remanding *United States* v. *Hinds County School Board*, 417 F. 2d 852 (C.A. 5), certiorari denied, 396 U.S. 1032. Today, more than twenty years after *Brown* v. *Board of Education*, 347 U.S. 483 (*Brown I*), the Mississippi Constitution still provides that "[s]eparate schools shall be maintained for children of the white and colored race," Miss. Const. Art. 8, § 207, and the state constitution still contains an antimiscegenation provision, Miss. Const. Art. 14, § 263, although these provisions are without legal effect. In recent years the Fifth Circuit has ruled that both the Mississippi Highway Patrol and the Mississippi Cooperative Extension Service were guilty of discriminatory employment practices. *Morrow* v. *Crisler*, 479 F. 2d 960, affirmed and remanded, 491 F. 2d 1053 (*en banc*), certiorari denied, 419 U.S. 895; *Wade* v. *Mississippi Cooperative Extension Service*, 528 F. 2d 508.

533; *White* v. *Regester*, 412 U.S. 755). The impact of use of the first method in Mississippi—shown by low registration and voting and poor political organization among blacks—has been reinforced by apportionment plans which exemplify the second method by minimizing the opportunities of Mississippi blacks to influence the choice of state legislators. As early as 1890, the state adopted a reapportionment plan intended to reduce the effectiveness of the black vote (see Brief App. A at 3a-13a).[41] The state adopted reapportionment plans in the 1960's and 1970's which combined black and white majority counties and employed multi-member districts, as did the 1890 plan, to submerge large concentrations of black population in white majority districts (see Brief App. A at 13a-28a). The district court adapted that multi-member scheme to its 1971 and 1975 temporary plans (see pp. 59-63, *infra*). As a result, we submit, no election in this century for the Mississippi legislature, down to the most recent, has been held under an apportionment plan free from the effects of discrimination against blacks.

This Court has repeatedly recognized the unique importance of free and equal political participation by all citizens in our system of government. "[A]ny unjustified discrimination in determining who may participate in political affairs or in the selection of

[41] Thus, the district court's observation that the "one person, one vote rule" *caused* dilution of black voting strength, *Connor* v. *Waller*, 396 F. Supp. 1308, 1321-1322, appears to miss the mark.

public officials undermines the legitimacy of representative government." *Kramer* v. *Union Free School District No. 15*, 395 U.S. 621, 626. See also, *Reynolds* v. *Sims*, 377 U.S. 533; *Dunn* v. *Blumstein*, 405 U.S. 330. Moreover, "since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights," *Reynolds* v. *Sims*, *supra*, 377 U.S. at 562, it is essential that all groups have access to the political process.

While no group is constitutionally guaranteed the right to be represented in the state legislature (*White* v. *Regester*, 412 U.S. 755, 769; *Whitcomb* v. *Chavis*, 403 U.S. 124, 156), neither may an electoral scheme deprive a racial minority of the opportunity to participate equally with the dominant group in the selection and election of candidates. As noted in *South* v. *Peters*, 339 U.S. 276, 279 (Douglas, J., dissenting):

> The right to vote includes the right to have the ballot counted. * * * It also includes the right to have the vote counted at full value without dilution or discount. * * * That federally protected right suffers substantial dilution * * * [where a] favored group has full voting strength [and] [t]he groups not in favor have their votes discounted.

And the Court has held that "[f]ull and effective participation by all citizens in state government requires, therefore, that each citizen have an equally effective voice in the election of members of his state legislature." *Reynolds* v. *Sims*, 377 U.S. 533, 565.

See also, *Kramer* v. *Union Free School District No. 15*, 395 U.S. 621, 627 n. 7.

This right is even more critical where, as here, the political groups are formed along racial lines. The practice of racial bloc voting, together with the majority vote requirement for primaries and special elections, Miss. Code Ann. §§ 23-3-69, 23-5-203 (1972), tends to translate into political impotence for blacks in districts which have white voting age majorities. Whatever may be the rights of a political interest group to exert its influence, the Fourteenth and Fifteenth Amendments mandate special protection against an electoral scheme which deprives blacks of effective exercise of their political strength. See *Whitcomb* v. *Chavis*, 403 U.S. 124, 169. As one commentator has noted:[42]

> For a racial minority like the Negro, indeed, the right of suffrage is more than a symbol of its role in a democracy. In a system such as ours, political action is a principal instrument for the protection of individual and group rights. As a disenfranchised minority, the Negro would have little hope to exert political pressure to bring about an end to discriminatory practices.

Nor does the absence of a slating process [42a] in Mississippi mean, as the district court implies, that blacks

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[42] Schwartz, *Statutory History of the United States: Civil Rights* 367 (1970).

[42a] The slating process involves choice of candidates by a party organization, rather than by a primary in which no candidate receives party support. Anyone, including blacks, may run in primary or general elections in Mississippi without party nomination.

have an equal opportunity to participate in the electoral process (III A. 225). The right to stand for office or to vote as an elector is individual and personal. Effective participation in the democratic process depends upon collective political support. See Note, *The Supreme Court 1970 Term*, 85 Harv. L. Rev. 3, 138-139 (1971). Candidates are elected when interest groups form coalitions to support them. In Mississippi, however, whites, who are a majority, will not form coalitions with blacks to elect black candidates or candidates identified with black interests (see pp. 39-41, *supra*). Accordingly, blacks are not able to participate equally in the process leading to nomination and election of candidates in white majority districts,[43] and their individual votes are thus diluted or cancelled. See *Beer* v. *United States*, 425 U.S. 130, 144 (White, J., dissenting).

Contrary to the district court's conclusion (III A. 225, 226), the fact that blacks—due in large part to the decisions of this and other federal courts and to federal legislation such as the Voting Rights Act of 1965—are able to register and vote in Mississippi is not conclusive of whether their voting rights are being infringed. Their vote is of little consequence if they have no realistic opportunity to elect a can-

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[43] This case is thus unlike *Whitcomb* v. *Chavis*, *supra*, where this Court found that blacks in Marion County, Indiana, were able to participate equally with whites in the political processes leading to nomination and election, 403 U.S. at 149, and to gain representation in the state legislature. *Id.* at 150 n. 29. Moreover, there was no evidence in *Whitcomb* that voters were racially polarized, as they are here.

didate responsive to their interests. Since the right to vote "implies that the voter have some reasonably meaningful participation in the choice of candidates and of policies, * * * to give a black voter a choice of voting for one of the three white candidates who know nothing and care less about his or her interests is to render the vote nugatory and the right meaningless." *Wallace* v. *House*, 515 F. 2d 619, 629 (C.A. 5), vacated on other grounds, 425 U.S. 947.

Although blacks have no right to elect a black candidate, they have the right to an equal opportunity to elect a candidate who will represent their interests. Mississippi blacks, who suffer the effects of discrimination, are entitled to have a fair chance of electing legislators who appreciate and will be responsive to those interests. See Bonapfel, *Minority Challenges to At-Large Elections: The Dilution Problem*, 10 Ga. L. Rev. 353, 360 (1976). Where, as in Mississippi, race is an important factor in the political process, the majority, elected without the need for minority support, is not likely to protect minority interests. See *Graves* v. *Barnes*, 343 F. Supp. 704, 727, 732 (W.D. Tex.), affirmed *sub nom. White* v. *Regester*, 412 U.S. 755.

The results confirm this observation. Despite the size of the state's black population, only four blacks have been elected to the Mississippi legislature since Reconstruction—and only in districts with strong black majorities of voting age population (see p. 43, *supra*). It is not surprising that the legislature, elected from districts in which voting was along racial lines and in which blacks support is not needed,

has done little to enforce the constitutional mandate of racial equality, and has, indeed, participated in the thwarting of many of the rights of black citizens of Mississippi (see pp. 44-45 n.2, *supra;* Brief App. A). As this Court has noted, legislators represent those whose support they need to win election. *Dallas County* v. *Reese*, 421 U.S. 477, 481.

C. The Remedy For The Dilutive Effects Of Past Discrimination And Bloc Voting Is To Avoid Unnecessarily Submerging Black Voting Age Population Concentrations In White Majority Districts.

The district court appears to have concluded, without explanation, that black voting strength could not be diluted in a district where blacks have a majority of the population. 396 F. Supp. 1308, 1326-1330 (S.D. Miss.).[**]

The proper measure of dilution of voting strength is not population, but access to the political process. *Zimmer* v. *McKeithen*, 485 F. 2d 1297, 1303 (C.A. 5) (*en banc*), affirmed on other grounds *sub nom. East Carroll Parish School Board* v. *Marshall, supra; Graves* v. *Barnes, supra*, 343 F. Supp. at 733, affirmed, *White* v. *Regester, supra*, 412 U.S. at 769. Only those of voting age can have an effect on the

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[**] Throughout this litigation, the district court has considered only general population statistics to the exclusion of voting age population data. Despite its statement that population is not controlling (II A. 210), it has continued to limit its consideration to those statistics (II A. 207-211; III A. 134-135, 221-223, 280-282).

political process. Thus, the starting point for determining voting strength is voting age population, *i.e.*, persons 18 years or older (hereinafter "VAP"). Since the black proportion of the VAP in Mississippi is less than that of the general population, some districts which have black population majorities are majority white under a voting age population standard.[45]

The inquiry does not end there, however. Voting strength must be assessed against Mississippi's historic exclusion of blacks from politics. As we have

[45] We believe the district court erred in relying upon population data without articulating the source and methodology for obtaining its estimates. It is not clear whether the district court apportioned population among precincts on the basis of the number of registered voters in each precinct (as the court indicated in its opinion of August 24, 1976, III A. 114), or on the basis of the number of votes received by the gubernatorial candidates in the August 1975 Democratic primary (as indicated in the Special Master's report of December 8, 1976, III A. 260, 261). In either case, we believe the method to be inherently biased. Under either approach, districts containing heavily black precincts are likely to be underrepresented, since blacks register and vote in proportionately lower numbers than whites. There is no basis in the record for concluding that the court's results would accurately reflect population distribution. See *Burns* v. *Richardson*, 384 U.S. 73, 94-95. Our analysis of the population of the court's districts, which is based upon 1970 Census data and is described in Brief Appendix B, *infra*, indicates that the court's method was not reliable. In addition, the court's method provides no ready means of retrieving the racial breakdown of its districts. While we acknowledge that any practical means of ascertaining population involves estimation, the use of Census data and articulation of methodology would have afforded a neutral and more readily verifiable set of population statistics.

shown (pp. 41-42, *supra*), that past discrimination discourages present participation by blacks. *Graves* v. *Barnes*, *supra*, 343 F. Supp. at 733; *Zimmer* v. *McKeithen*, *supra*, 485 F. 2d at 1305.

The Fifth Circuit, recognizing this reality, has held in a voting case arising out of Leflore County, Mississippi, that a redistricting plan in Mississippi which produces only slim black majorities of *registered voters* "[enhances] the possibility of continued black political impotence." *Moore* v. *Leflore County Board of Election Commissioners*, 502 F. 2d 621, 624. *A fortiori*, in the context of Mississippi politics, districts with only a slight black VAP majority do not afford blacks a realistic opportunity to make their voice heard in the election of legislators. The evidence indicates that in this case, taking account of low registration and voting among blacks, more than a bare majority of the VAP is necessary to enable Mississippi blacks to elect a candidate of their choice.[46]

[46] The testimony varies regarding precise racial compositions needed in a district for blacks to have an effective voice in an election. Mr. Rims Barber stated in his deposition that unless a district "has [a] 58% black voting age population, * * * it does not have an effective working electoral majority * * *" (I A. 240). Dr. Gordon Henderson testified that, depending upon the particular locality, a 54 to 65 percent black population majority would be needed for there to be "a probability of electing black candidates * * *" (II A. 55, 56). We believe that 54 percent black VAP is, in the circumstances prevailing in Mississippi, the approximate minimum racial composition needed for blacks to have a working majority in a district.

In all these circumstances, we submit, the district court, in adopting a court-ordered plan, was required as a matter of equity to take account of these past infringements and adopt a districting scheme which would not perpetuate their effects. See *White* v. *Regester*, *supra*, 412 U.S. at 765, 769, affirming *Graves* v. *Barnes*, 343 F. Supp. 704, 733-734 (W.D. Tex.). As this Court recognized in an earlier voting rights case (*Louisiana* v. *United States*, 380 U.S. 145), even a facially neutral practice, formulated without discriminatory intent,[47] can perpetuate prior racial discrimination (*id.* at 154-155). Where that occurs, such a practice must be eschewed in favor of one which will not have that discriminatory effect. For, in these circumstances, "the [district] court has not merely the power but the duty to render a decree which will so far as possible eliminate the discriminatory effects of the past as well as bar like discrimination in the future" (*id.* at 154).

Since racial discrimination is being remedied, the district court should have taken account of racial

[47] This Court's recent decisions in *East Carroll Parish School Board* v. *Marshall*, *supra*, and *Chapman* v. *Meier*, *supra*, show that the propriety of a court-ordered plan is to be judged by its effects, and not merely by the motivations of the court which draws it. Such a rule is preferable to one which would require plaintiffs to introduce evidence attempting to impugn the motives of a district court and which would require a reviewing court to speculate on the state of mind of the lower court. Thus, this case is distinguishable from *Wright* v. *Rockefeller*, 376 U.S. 52, which was a challenge to an allegedly purposeful gerrymander by the New York state legislature.

factors in the formulation of effective relief. As this Court has noted in another context, "just as the race of students must be considered in determining whether a constitutional violation has occurred, so also must race be considered in formulating a remedy." *Board of Education* v. *Swann*, 402 U.S. 43, 46.[48] See also, *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 18; *United States* v. *Montgomery County Board of Education*, 395 U.S. 225.

In so contending we do not suggest that the district court was required to engage in the reverse of the blatant racial discrimination that Mississippi has used to the present day to create and preserve an exclusively white state government. The basic model for any reapportionment calls for contiguous, reasonably compact districts with minimal population variances which meet the one-person, one-vote standard. See, *e.g.*, *Reynolds* v. *Sims*, *supra*. But in drawing such a plan the district court necessarily was concerned also with race. This was unavoidable be-

[48] If the reapportionment plan at issue had been formulated by the Mississippi legislature, race-consciousness would have been necessary in order to achieve compliance with the substantive protections of Section 5 of the Voting Rights Act. See *City of Richmond* v. *United States*, 422 U.S. 358, 370-372. For Section 5 encompasses changes in voting practices and procedures that have the potential for "dilution of voting power". *E.g.*, *Perkins* v. *Matthews*, 400 U.S. 379, 390; *Allen* v. *State Board of Elections*, 393 U.S. 544, 569; *City of Petersburg* v. *United States*, 354 F. Supp. 1021, affirmed, 410 U.S. 962.

cause racial discrimination in voting is a principal element of the violation being remedied."

In this respect it is not "racial representation by ratio [which the Constitution demands] but racial equity in the political process." *Wallace* v. *House*, *supra*, 515 F. 2d at 638. See also *Whitcomb* v. *Chavis*, *supra*, 403 U.S. at 149. Where there has been a history of discrimination it becomes important to gauge a racial group's potential influence on the choice of legislators in order to determine whether that potential has been minimized. See *White* v. *Regester*, *supra*.

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[49] Since racial distributions are generally known, the draftsman of a reapportionment plan is likely to and can readily ascertain the general racial compositions of the districts he draws. Cf. *Beer* v. *United States*, 425 U.S. 130, 144 (White, J., dissenting). The Special Master's report of December 8, 1976, contained the racial breakdown of several House districts (III A. 266-268, 275-276), and the district court's orders have included data on racial composition of counties and districts. (See, *e.g.*, III A. 115.) The Bureau of the Census publishes racial population data. (See, *e.g.*, Brief App. B, *infra*.) Both the original plaintiffs and the United States submitted to the district court information concerning the racial population of districts to which they objected. (See, *e.g.*, III A. 160-168; III A. 206-219.) Moreover, the Special Masters in this case have been involved in drawing reapportionment plans for several counties in which claims of racial dilution were made and evidence was introduced showing the geographic location of the black population and the racial breakdown of the districts created. For example, Mr. William Neal was previously asked by the district court to consider creating single-member districts in Hinds County (III A. 95). Mr. Hoyt T. Holland, Jr., as an official of Comprehensive Planners, Inc., has drawn supervisor district apportionment plans for Hinds, Warren and Forrest Counties, among others. (*Kirksey* App., *infra*, n. 64, p. 76 at 368, 472-476.)

A practical criterion for determining whether potential voting strength has been diminished is the proportion of the number of seats with respect to which blacks would have a "reasonable chance to be successful," *Graves* v. *Barnes*, *supra*, 343 F. Supp. at 734, compared with their proportion of the voting age population.

Applying this approach in *Beer* v. *United States*, 425 U.S. 130, 137 n. 8, the Court noted that blacks, who constituted 35 percent of the registered voters in New Orleans, had a "theoretical potential of electing 1.7 of the five councilmen." The Court concluded that under the redistricting plan in question "at least one and perhaps two Negro councilmen" could be elected, *ibid.*, and upheld the constitutionality of the plan. See also *id.* at 157 (Marshall, J., dissenting); *Kirksey* v. *Board of Supervisors of Hinds County*, 528 F. 2d 536, 543 (C.A. 5), reheard September 9, 1976.

In shaping a remedy, such a proportional comparison provides a helpful "starting point" (*Board of Education* v. *Swann*, *supra*, 402 U.S. at 46), by providing a ready measurement of dilution, as well as a means of assuring that majority voting rights are not infringed. A proportional measure protects each group. See, Note, *Compensatory Racial Reapportionment*, 25 Stan. L. Rev. 84, 87 (1972).[50]

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[50] Such an approach is merely a temporary measure to remedy the effects of past discrimination. Once blacks are given an opportunity to elect candidates who will represent their interests, the importance of race as an issue in Missis-

Notwithstanding its duty to avoid perpetuation of the effect of past racial discrimination, the district court did little more than state that "[t]here shall be no minimization or cancellation of black voting strength" (III A. 101), list the racial composition by population of the various Senate districts it was creating (III A. 115) and list some thirty black population majority districts in its plan for the House (III A. 134-135). It did not make findings indicating the extent to which it had taken the dilution problem into account in drawing the districts which produced the racial groupings it listed; it did not address the evidence of racial bloc voting; and it did not consider the significance of voting age population as an index against which to test the dilution of potential black voting strength, even though it had been asked to do so [51] and had the necessary racial information available to it.

In sum, on the crucial issue of remedying racial discrimination, while the path by which the district court reached its decision cannot be fully discerned, the plan it adopted is inadequate because it fails to

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sippi elections and as a consideration in electoral districting, should diminish. See, Note, *Compensatory Racial Reapportionment*, 25 Stan. L. Rev. 84, 89 (1972). Moreover, black participation should be encouraged by a reapportionment plan which assures blacks access to the political processes. See Bonapfel, *Minority Challenges to At-Large Elections: The Dilution Problem*, 10 Ga. L. Rev. 353, 389 (1976).

[51] Memorandum of the United States in Support of Motion for Amendment of Judgment, attached to Motion for Amendment of Judgment (II A. 252-253).

avoid unnecessary fragmentation of black voting strength. In the context of racial bloc voting and electoral discrimination shown here, the remedy formulated by the district court should have been designed to achieve full realization of the long-suppressed black voting strength, rather than lend itself unnecessarily to continued dilution of that voting strength through fragmentation of substantial concentrations of black voters in majority-white districts.

D. The District Court's Plan Unnecessarily Fragments Concentrations Of Black Voters And Submerges Them Into White Majority Districts.

In light of the foregoing principles, we submit that the district court failed properly to exercise its remedial authority as a court of equity in six counties; three involve Senate districts and three involve House districts. In each of these counties, alternatives were available which would have avoided unnecessary dilution of black voting strength under the district court's own announced criteria (see Statement, *supra*, pp. 21-22), and under this Court's decisions. The court's error can be seen by examining the dilutive effects of the 1975 court-ordered plan, and comparing the extent to which its final plan remedied dilution under the previous plans, with the situation in the six counties where the plan is deficient.

1. *The dilutive effects of the 1975 court-ordered temporary plan.*

The 1971 and 1975 legislative elections were conducted pursuant to temporary plans for each house

devised by the district court after the court concluded that lack of time, resources and necessary data precluded the formulation and implementation of a satisfactory final decennial plan (see Statement, *supra*, pp. 12, 17). These "temporary" plans fell short of remedying the existing infringement of black voting rights. Indeed, by the use of multi-member districts and by the configuration of some districts, those plans perpetuated the historic minimization of black voting strength which began with the 1890 Constitution.

a. *The 1975 legislative plan.* The 1975 court-ordered plan was an adaptation of the 1975 plan enacted by the Mississippi legislature (III A. 223). The district court stated, in discussing special elections, "that the temporary plan comported with all pertinent constitutional standards" (*ibid.*). The legislative plan [52] distributed the 122 House seats among 71 districts and subdistricts, of which 24 were multi-member districts and 34 were floterial districts and subdistricts.[53] It distributed the 52 Senate seats

[52] That plan was essentially the same as the 1971 court-ordered plan and the 1973 legislative plan. The only differences were that under the earlier plans all representatives elected from Hinds County (District 31) and Harrison County (District 45) were elected at-large, whereas under the 1975 plan floterial districts were created in those counties. In addition, there were certain differences regarding residency requirements among the plans.

[53] A floterial district is one comprised of two or more subdistricts and a floater district. One or more representatives are elected from each subdistrict and one or more are elected at-large from the whole district. For example, counties X and

among 33 districts, of which 14 were multi-member.[54] The districts consisted of whole counties, either singly or in combination. Although there were 17 counties with black voting age population majorities, only 10 of the 71 House districts and subdistricts, and five of the 33 Senate districts had black VAP majorities. Of the 15 black VAP majority districts and subdistricts in the 1975 legislative plan, eight had majorities of 54 percent or more.

In the House, nine black majority VAP counties were combined with white majority VAP counties to form ten white majority VAP districts and subdistricts and three black majority VAP districts and subdistricts. In the Senate 13 black majority VAP counties were combined with white majority VAP counties to form six white majority VAP districts and two black majority VAP districts. The remaining black majority VAP counties were constituted as single county districts or combined with other black majority VAP counties to form black majority VAP districts (see Brief App. A, at 19a-28a).

Y could be combined in a floterial district so that one representative would be elected from county X, two elected from County Y and two elected at-large from counties X and Y. Thus, each subdistrict of a floterial district may be considered multi-member. We have counted each subdistrict and floater district separately since each has a different constituency.

[54] A reapportionment plan is more likely to be dilutive "where the multi-member districts compose a large part of the legislature, where both bodies in a bicameral legislature utilize multi-member districts, or where the members' residences are concentrated in one part of the district." *Chapman* v. *Meier*, 420 U.S. 1, 17.

A discriminatory pattern is discernable in the manner in which counties were combined. Black majority VAP counties were combined with white majority VAP counties to form 21 House and Senate districts and subdistricts. Only five of those 21 districts and subdistricts had black VAP majorities, and three of those five were only slightly more than 50 percent black. Moreover, in two of the five it appears unlikely that a white majority district could have been formed from contiguous counties. 396 F. Supp. at 1333-1341.

b. *The 1975 court-ordered temporary plan under which the current legislature was elected.* The district court's 1975 temporary plan did not significantly differ from the legislative plan. It increased the number of House districts (including subdistricts) from 71 to 84 and the Senate districts (and subdistricts) from 33 to 39. The 122 House seats were distributed among 84 districts (and subdistricts) of which 21 were multi-member districts and 28 were floterial districts and subdistricts. The 52 Senate seats were distributed among 39 districts (and subdistricts), of which 12 were multi-member districts and three were floterial districts and subdistricts. Only eight of the House and Senate districts in the legislative plan were altered by creating single-member districts, floterial districts, and altering the composition of districts.[55] Of the 17 black majority counties 15 were

[55] In the Senate, district 22 (Hinds County) was changed from a multi-member district to five single-member districts and district 27 (Jones, Covington, Jefferson Davis, Lawrence,

treated as they had been under the legislative plan. As a result there were only 19 black majority VAP districts: 14 of the 84 House districts, electing 22 of the 122 representatives, and 5 of the 39 Senate districts, electing eight of 52 Senators. Since the district court failed to articulate "special circumstances" which would justify the use of multi-member districts in a court-ordered plan, the 1975 temporary plan was invalid under this Court's decisions (see pp. 36-37, *supra*), as the district court itself recognized in drawing its final plan (III A. 98-99).

At the time it formulated the 1975 temporary plan the district court recognized that an apportionment plan containing multi-member districts, which combined a black majority county with a white majority county to form a white majority district, had the potential to dilute black voting strength. The court found dilution in two existing multi-member districts

and Marion Counties) was changed from multi-member to a floterial district (one floater district and two subdistricts). In the House, district 3 (DeSoto and Marshall Counties) was changed from a multi-member district to a floterial district (one floater district and two subdistricts), district 28 (Madison and Rankin Counties) was changed from a floterial district (one floater district and two subdistricts) to three single-member districts, district 31 (Hinds County) was changed from a floterial district (one floater district and five subdistricts) to twelve single-member districts, districts 42, 43, and 46 (Greene, Perry, Pearl River, Stone, Jackson, and George Counties) were changed from multi-member and at-large districts to single-member districts and district 47 was added to make eight single-member districts.

(House Districts 3 and 28)[56] and created new districts in the temporary plan to attempt to avoid the dilution in those two districts (II A. 207, 218-219). The court also recognized the possibility of dilution in certain other districts, but declined to formulate new districts for the temporary plan due to its belief that there was a lack of time or of adequate data, or an inability to devise a satisfactory plan for the particular district, especially in light of its desire not to violate county boundaries.[57] The court

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[56] Regarding district 3, the court stated, in part: "Since Marshall County is entitled to elect one Representative, is a black majority county, and is submerged with a much larger white majority county for the election of Representatives at large, it is obvious that its power to elect one Representative from a black majority county has been diluted" (II A. 219). Regarding district 28, the court stated, in part: "Obviously it may reasonably be argued that there is a potential for dilution in this combination [Madison and Rankin Counties]" (II A. 218).

[57] House District 14 (Bolivar County):

> The Department of Justice says that this County could be divided into three single-member districts in such a fashion as to improve the chances of electing a black representative, but for lack of adequate data conforming to precinct lines this cannot now be done. The Court expects to give the division of Bolivar County further study for the permanent plan (II A. 216).

House District 15 (Issaquena and Washington Counties):

> In the formulation of a permanent plan, with adequate data, this district should include some, if not all, single-member districts (II A. 221).

House District 17 (Carroll and Leflore Counties):

> The district has black voting age population of 50.1%. With appropriate data the district should be susceptible to division, reducing its three member status (II A. 216).

House District 24 (Kemper and Lauderdale Counties):

> Kemper County is 54.84% black and is combined in a four Representative district with Lauderdale, with one of the four being required to be a resident of Kemper. The size of this district must be reduced.
>
> The legislative district status of these two geographically isolated black counties [Kemper and Noxubee] was the subject of extended discussion in the informal court-counsel conference of July 7, 1975. * * * No presently viable plan was suggested.
>
> * * * We have concluded that there are no presently viable answers to this peculiar situation, so we leave it as it is, with top priority when we come to consider the permanent plan (II A. 222).

House Districts 23 (Lowndes County); 23a (Oktibbeha and Noxubee Counties); 23b (Lowndes, Noxubee and Oktibbeha Counties, Floater district):

> These [Noxubee and Kemper Counties] are the only two black majority counties in East Mississippi. On its South side Noxubee joins Kemper. On their East sides both counties join Alabama.
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> * * * * *
>
> Noxubee County is now combined with Oktibbeha County for the election of a Senator and for the election of two Representatives. As to the election of a Representative this is not satisfactory because Oktibbeha County has 28,752 people, twice that of Noxubee. Noxubee is 65.77% black, Oktibbeha is 65.21% white (II A. 221-222).

House District 30 (Claiborne and Warren):

> [Claiborne County has a] [b]lack population majority 4,986. * * * Claiborne is combined with Warren County, which has 41% black population. * * *
>
> Claiborne might be joined with some identifiable portion

stated, however, that it would give top priority to eliminating the existing dilution in the formulation of a final plan (II A. 222). Its adoption of single-member districts in the final plan contributed to this objective, but the final plan nevertheless was inadequate in particular respects to be discussed.

2. The final plan's elimination of unnecessary dilution in many districts by creation of single-member districts throughout the state.

In formulating a final plan, the court utilized single-member districts to comply with this Court's prior decisions regarding court-ordered plans (see pp. 36-37, *supra*). All House and Senate districts are single-member. In a number of instances, these districts remedy the dilution of black voting strength existing in certain multi-member districts created under the court's temporary plan. Twenty-four of the House districts and nine of the Senate districts have black VAP majorities. Of those, 17 of the House districts and four Senate districts have black VAP majorities of 54 percent or more. In four instances the final plan creates single-member districts with black VAP majorities out of prior multi-member districts that had white VAP ma-

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of Warren County for a single-member district. However, by order of a three-judge court in a reapportionment case, Warren County presently has no validly existing Supervisor Beats (II A. 216).

jorities.[58] * In two instances, the final plan creates black VAP majority districts out of a combination of multi-member districts in which at least one of the multi-member districts was white VAP majority.[59] In ten other instances (seven House and three Senate districts) the increase in the black VAP majority in a newly created single-member district over that previously existing in a multi-member district is such that the opportunity for blacks to exert their full and fair impact on elections is significantly enhanced.[60] Finally, two other districts created in the final plan are an improvement over the temporary plan, but in our view do not eliminate the dilution of black voting strength in Washington and Issaquena Counties[61] (see pp. 88-90, *infra*).

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* Footnotes 58 through 61 are printed at pp. 68-73, *infra*.

Final Plan District	BVAP%	Temporary Plan District	Number of Representatives	BVAP%
House 52 (Noxubee County, Lowndes County: Precincts of Crawford and Artesia)	61.3	23 (Lowndes County)	2	27.9
		23A (Oktibbeha and Noxubee Counties)	2	35.8
		23B (Lowndes, Oktibbeha and Noxubee Counties)	1	31.6
House 79 (Lauderdale County: Meridian City Precincts 5, 6, 9, 13, 14, 15, 16, 17, 18 and Precinct of East Bonita)	50.0	24 (Kemper and Lauderdale Counties)	4	28.8
House 89 (Adams County: Beats 4, 5 and Precinct of Somerset)	50.8	33 (Adams County)	2	44.0
House 97 (Wilkinson County, Amite County: Beats 1, 2, 3)	54.2	34 (Amite, Franklin, Wilkinson Counties)	2	46.6

68

Final Plan District	BVAP%	Temporary Plan District	Number of Representatives	BVAP%
House 47 (Sharkey County, Humphreys County: Beat 5, Silver City Precinct in Beat 3, Yazoo County: Precincts of Carter, Lake City, Eden, Free Run, East Midway, West Midway & Harttown in whatever beats situated)	61.8	16 (Holmes and Humphreys Counties)	2	59.4
		29 (Sharkey and Yazoo Counties)	2	49.6
House 81 (Claiborne and Jefferson Counties)	70.4	30 (Claiborne and Warren Counties)	3	44.3
		32 (Copiah and Jefferson Counties)	2	50.1

69

Final Plan District	BVAP%	Temporary Plan District	Number of Senators/ Representatives	BVAP%
House 3 (Marshall County: Beats 1, 2, 3, 4)	62.0	3 (DeSoto County)	1	30.2
		3A (Marshall County)	1	55.9
		3B (DeSoto & Marshall Counties)	1	40.5
House 8 (Coahoma County: Precincts of Coahoma, Lula, Lyon and Jonestown; Tunica County: Beats 1, 2, 3, 4 and Armory Precinct)	67.2	11 (Coahoma County)	2	58.2
		11A (Tunica & Quitman Counties)	1	56.8
		11B (Coahoma, Tunica & Quitman Counties	1	57.6
House 16 (Coahoma County: Mattson Precinct in Beat 3, Clarksdale Precincts in Beats 4 and 5)	68.5	11 (Coahoma County)	2	58.2
		11A (Tunica & Quitman Counties)	1	56.8
		11B (Coahoma, Tunica & Quitman Counties)	1	57.6

70

[Continued]

Final Plan District	BVAP%	Temporary Plan District	Number of Senators/ Representatives	BVAP%
House 22 (Bolivar County: Beat 1 and Precincts of Pace, Longshot, Shaw, Skene & Stringtown; Sunflower County: Precinct of Bayer-Linn)	62.2	13 (Sunflower County)	2	54.8
		14 (Bolivar County)	3	52.9
House 24 (Bolivar County: Beat 3 and Precincts of North Cleveland and Merigold)	61.0	14 (Bolivar County)	3	52.9
House 25 (Sunflower County: Beats 1, 3 and Precinct of Moorhead)	56.8	13 (Sunflower County)	2	54.8
House 37 (Leflore County: Beats 4 and 5)	63.0	17 (Carroll & Leflore Counties)	3	50.1
Senate 15 (Sunflower County; Bolivar County: Precincts of Shelby & Duncan-Alligator)	57.2	11 (Bolivar & Sunflower Counties)	2	53.7

71

[Continued]

Final Plan District	BVAP%	Temporary Plan District	Number of Senators/ Representatives	BVAP%
Senate 16 (Washington County: Beats 1, 3, 4)	51.7	12 (Humphreys & Washington Counties)	2	50.5
Senate 28 (Madison County; Holmes County: Beats 2, 3; Yazoo County: Precincts of Benton, Deasonville, Fugates, Eden, Free Run, East Midway, West Midway, Harttown, Carter & Dover (in whatever Beats situated))	56.0	15 (Holmes, Issaquena, Madison, Sharkey and Yazoo Counties)	2	54.8

72

Final Plan District	BVAP%	Temporary Plan District	Number of Representatives	BVAP%
House 32 (Issaquena County; Washington County: Beat 1 and Precinct of Avon)	53.1	15 (Issaquena & Washington Counties)	4	49.4
House 33 (Washington County: Precincts of Ward Center, Community Center, Arcola & Hollandale)	50.9	15 (Issaquena & Washington Counties)	4	49.4

73

3. *The final plan's failure to remedy unnecessary dilution in six counties.*[62]

Notwithstanding the district court's recognition of the need to avoid unnecessary dilution of black voting rights, and its correction of such dilution in many districts, it failed to apply this principle in six counties: Hinds, Warren, Forrest, Washington, Claiborne and Jefferson. In three of those counties—Hinds, Warren, and Forrest—blacks constitute a sizeable minority of the population and a substantial number are geographically concentrated in and around major cities: Jackson, Vicksburg, and Hattiesburg, respectively. Despite these concentrations, the black population in each county has been fragmented among two or more districts in a manner which submerges that black population in white majority districts. Blacks do not have a voting age population majority in any district in these counties.

The same fragmentation is accomplished in Washington County to produce House districts with black VAP majorities so slight that blacks will continue to be denied an opportunity to exert their fair influence on elections in that county.

Claiborne and Jefferson are adjacent counties in southeastern Mississippi. Both have black VAP majorities. Although a number of proposed plans in the record would combine black concentrations to form a

[62] Maps and statistical charts comparing the districts in which these counties appear in the district court's final plan with alternative districts we propose are contained in Brief Appendix C, *infra*.

compact proposed Senate district, the district court chose to divide them placing each in a relatively less compact district, one with a white VAP majority and the other with a slight black VAP majority.

In all of the foregoing situations the district court's plan adopted districts which unnecessarily fragment concentrations of black voters. The court should have examined the proposed alternatives to determine the feasibility of any having less potential for adversely affecting voting rights. See, *e.g.*, *Dunn* v. *Blumstein*, 405 U.S. 330, 343; *Chapman* v. *Meier*, *supra*, 420 U.S. at 25-26. While the district court sought to justify any "apparent dilution" of black voting strength on the grounds that it was "dictated by the necessity for drawing district lines so as to adhere as closely as reasonably possible to the population norm while maintaining contiguity and a reasonable degree of compactness" (III A. 94, 101), its findings do not show why alternatives which met these criteria were rejected in favor of "apparent dilution".[63]

a. *Hinds County* (see Brief App. C-1 and C-2). Hinds County is the state's most populous county and site of the state's largest city, Jackson. It has a total population of 214,973, and a black population of

[63] The district court discussed only two of the eight statewide plans submitted to it by the plaintiffs (III A. 100). Those were discussed only in general terms and not with respect to individual districts.

The alternatives are contained in Appendix C to this brief. They were designed to comply with the court's directive that the plan conform to county, beat or precinct lines (III A. 94, 97).

84,064. Blacks constitute 39.1 percent of its total and 34 percent of its voting age population.[64] Sixty-nine percent of the black population of the county is geographically concentrated in 48 contiguous black population majority census enumeration districts in Jackson.[65] No black has ever been elected to the Senate from Hinds County or to any county office in this century.[66]

In drawing the five Senate districts there (Nos. 31-35), the court below utilized the boundaries of the county's supervisor districts ("beats") drawn by the Board of Supervisors, which are themselves currently being challenged on the ground that they dilute black voting strength.[67]

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[64] Appendix in *Kirksey* v. *Board of Supervisors of Hinds County*, C.A. 5, No. 75-2212 [hereinafter cited as "*Kirksey* App."] at 533, 544. The record in the *Kirksey* litigation was incorporated into the record in this case (I A. 51). The appendix prepared for the appeal to the Fifth Circuit and most of the trial exhibits have been lodged with this Court as part of the record.

[65] *Id.* at 533.

[66] *Kirksey* App. at 547. In 1967, the Hinds County Election Commission disqualified and excluded from the ballot four black candidates for supervisor from the then-existing two black majority districts under a law which was subsequently held unenforceable for failure to comply with Section 5 preclearance and to which, when submitted, the Attorney General interposed an objection (*id.* at 547-548).

[67] The reapportionment was proposed by the Board of Supervisors and approved by the district court in April 1975. *Kirksey* v. *Board of Supervisors of Hinds County*, 402 F. Supp. 658 (S.D. Miss.). The district court's judgment was affirmed on appeal. 528 F.2d 536 (C.A. 5). The case was re-

In 1969, after the existing apportionment of beats was declared unconstitutional,[68] the Board of Supervisors adopted a reapportionment plan which created five white majority districts.[69] That plan was submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965. He interposed an objection on July 14, 1971, on the ground that dilution of black voting strength would result from combining blacks with a larger number of whites in each district in irregularly shaped, non-compact districts.[70] That plan was subsequently declared to be malapportioned [71] and was replaced by the current apportionment plan, which is in many respects similar to the 1969 plan.[72]

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heard on September 9, 1976. The *en banc* court has not yet ruled. The United States has participated as *amicus curiae* in all stages of the appeal.

[68] *Smith* v. *McGee*, Civ. A. No. 4483, decided ~~May 12, 1976~~ December 19, 1969 (S.D. Miss.).

[69] *Kirksey* App. at 543. Prior to 1968, two supervisor districts in Hinds County had substantial black population majorities of 76 percent and 68 percent (*id.* at 542). In the Third Congressional District, black candidate for the United States House of Representatives, Charles Evers, carried one of those districts and received a substantial number of votes in the other (*Kirksey* Exh. P-11).

[70] *Kirksey* App. at 7.

[71] The *Kirksey* suit, attacking the 1969 plan, was brought in July 1971. The district court declared the 1969 plan unconstitutional in December 1972 and ordered the Board to devise a new plan. *Kirksey* App. at 30-31.

[72] *Id.* at 535-537, 439, 442.

Prior to 1975, all five senators were elected at-large from Hinds County. While this Court's decisions in *Connor* v. *Johnson*, 402 U.S. 690, and *Connor* v. *Williams*, 404 U.S. 549, contemplated the single-member districting of Hinds County, the 1973 and 1975 legislative plans continued the past practices of multi-member districting, and single-member districts were not ordered by the district court until the 1975 temporary plan. That single-member plan, by adopting the "beats" drawn by the Board of Supervisors (II A. 228), perpetuated prior dilution of black voting strength.

The same districting has been adopted in the 1976 plan. Under the final plan, the black population of Jackson is divided into five parts by means of unusually shaped districts which extend from the far corners of the county and, through the use of long corridors, reach into Jackson (Brief App. C-1). While the bulk of the black population is divided between Districts 32 and 35 (supervisor districts 2 and 5), Districts 31, 33 and 34 snake through the city further dividing the contiguous majority black enumeration districts. The result is that each of the five districts has a white VAP majority.[73] That result was not

[73] *Kirksey* App. at 545. Although Districts 32 and 35 have slight black population majorities (Brief App. C-2) the undisputed testimony of two expert witnesses in *Kirksey* indicates that the voting age population of those districts is no higher than 48 percent and 48.6 percent, respectively (*ibid.*); *Kirksey* App. at 281, 391-392. The estimates of blacks among registered voters were 41.7 percent and 42.2 percent. *Id.* at 289-290.

unexpected. The areas with concentrations of black population within Jackson were well known to the board and those who prepared the county redistricting plan, one of whom (II A. 237) Mr. Hoyt T. Holland, Jr., is a special master in this litigation."[74]

The asserted rationale for the strange shape of the supervisor districts and the resulting fragmentation of the black population is the need to achieve equalization of road mileage, bridges, and land area among the districts, so as to equalize the primary responsibilities of the supervisors—maintenance of roads and

[74] In *Kirksey*, one of the plaintiffs' witnesses testified that, in view of the pattern of racial bloc voting (see *Kirksey* App. at 372, 378-379), the absence of a black VAP majority in any district rendered "highly unlikely" the election of a black candidate or a candidate identified with the interests of blacks in Hinds County. *Kirksey* App. at 322-326. Based upon a similar, but independent, analysis, a second expert stated his belief that the election of a black in Hinds County would be "impossible." *Id.* at 350-378, 393. There was no evidence to the contrary. Thus, there was no basis for the district court's conclusion that blacks have a "realistic opportunity" to elect candidates of their choice in two districts and significantly affect the elections in the other three districts. *Id.* at 560.

Although it is arguable that blacks may be better represented in some political situations when they comprise a substantial portion of the population in a number of districts, rather than a majority in any one district, the repeated failure of black-supported candidates to win elections in supervisor Districts 2 and 5, which have black voting age populations of approximately 47 percent-48 percent, and the general pattern of bloc voting and electoral discrimination shown here, demonstrate the inapplicability of that argument to Hinds County, as well as to Mississippi generally.

bridges.[75] Such equalization, however, was not a concern of the board until 1969, after the 1968 special election had demonstrated black voting strength.[76]

The initiative for equalization came not from the board, but from the planning firm which employed Mr. Holland.[77] The president of the Board of Supervisors testified that equalization is not necessary to efficient county government.[78] Although he would prefer a plan which combined rural and urban areas in each district, he did not believe that a plan which had two districts entirely within Jackson would disrupt county government.[79]

The pre-1969 plan, under which road mileage was not evenly distributed among the districts, neither created administrative problems nor disadvantaged any district financially.[80] Districts with greater road mileage were appropriated more funds.[81] After litigation challenging the 1969 plan was instituted the board began studying a plan for road and bridge

[75] *Kirksey* App. at 536-538. Supervisors perform a variety of other duties including levying taxes and providing for the health and welfare of county residents.

[76] Deposition of Supervisor J. L. McGee, *Kirksey* Exh. P-24 at 5, 17.

[77] *Id.* at 20-21.

[78] *Id.* at 21.

[79] *Id.* at 58, 59.

[80] *Id.* at 17-18.

[81] *Ibid.*

construction and maintenance throughout the county. These duties would have been performed under the collective supervision of all board members. The plan would have divided the county into four maintenance districts, apart from the supervisor districts, relieving board members of individual responsibility for maintenance in their respective districts.[82] In April 1974, the board apparently adopted the plan when it passed a resolution placing the county engineer in charge of the construction and maintenance of county roads and bridges.[83] On August 12, 1974—seven days before trial—the board rescinded that action, without explanation.[84]

Thus, we believe that the asserted policy of equalization was recently conceived and highly tenuous. Cf. *Village of Arlington Heights* v. *Metropolitan Housing Development Corp.*, No. 75-616, decided January 11, 1977, slip op. 13-14. However, whatever may be said of that rationale as supporting the use of noncompact districts for election of supervisors, it is not a justification for the use of such districts for election of state senators, whose responsibilities are neither directly nor primarily related to road and bridge construction and maintenance.

Several plans for Hinds County were offered by the original plaintiffs and the United States which, consistent with the district court's guidelines, would

[82] *Id.* at 59-62.

[83] *Kirksey* Exh. P-45.

[84] *Kirksey* Exh. D-5.

have produced more compact, regularly shaped districts without unduly fragmenting the black population concentrations in Hinds County.[85] The alternative plan for the county which the United States submitted as part of its Restricted Fractionalization Plan (Brief App. C-1, C-2) is illustrative.[86] The court did not explain its preference for the plan under attack in *Kirksey*.

b. *Warren County* (see Brief App. C-3, C-4, and C-5). Warren County has a total population of 44,981 and a black population of 18,355. Blacks constitute 40.8 percent of the total population and 38.15 percent

[85] See n. 18, *supra*, p. 23.

[86] In reviewing for the preparation of this brief the alternative plan for Senate districts in Hinds County submitted by the United States in the district court, we have discovered that the plan resulted in districts with a total variance of 12.1 percent rather than 6.75 percent, as we believed at the time. Since we recognize that such a variance is unacceptable in a court-ordered reapportionment plan, we have endeavored to adjust the district boundaries to reduce population deviations. We believe an acceptable level of variance (3.5 percent) can be obtained by transferring three voting precincts: voting precinct 18 from district 30 to district 29, precinct 59 from district 32 to district 31, and precinct 6 from district 30 to district 28. With those minor alterations, the relevant statistics are:

Senate District	Total Population	Black Population	% Black	Black VAP	% Black VAP	% Deviation
28	43,885	2,251	5.1	1,234	4.2	+2.9
29	42,838	27,716	64.7	15,191	59.7	+0.5
30	42,359	29,252	69.1	16,033	64.3	−0.6
31	43,352	7,056	16.3	3,867	13.6	+1.7
32	42,539	17,785	41.8	9,748	36.7	−0.2

of the voting age population. Under the 1975 legislative plan and the court's 1975 temporary plan, Warren County was part of a white VAP, multi-member district.[87] While the final plan creates single-member districts, it unnecessarily fragments black concentrations by forming districts (53, 54, 55) which are not compact at all and which are far less compact and contiguous than those suggested by the plaintiff (see Brief App. C-3, C-4). Under the court's plan House Districts 53 and 54 are totally within Warren County and encompass the City of Vicksburg. House District 55 is a large, sprawling district which spans the southeastern, eastern, and northern portions of Warren County, as well as part of Yazoo County to the northeast. Because of its strange shape, House District 55 cuts off two majority black census enumeration districts in the north of Warren County and one majority black census enumeration district in the east of Warren County from contiguous majority black enumeration districts in House District 54 (*ibid.*).

The majority of the blacks in Warren County live in Vicksburg in two nearly contiguous concentrations around the center of the City (Brief App. C-3, C-4). There are 16 black majority enumeration districts within the City (*ibid.*). The court's plan unnecessarily carves up these concentrations between House District

[87] Warren County was combined with Claiborne County in District 30 to elect three representatives. The VAP of District 30 was 44.3 percent black.

53 and House District 54.[88] House District 53 slices into the concentration of blacks within Vicksburg and then spreads outward, much like a mushroom. By forming House District 53 in this manner, the court's plan splits concentrations of majority black census enumeration districts, while creating a non-compact district which cuts diagonally through virtually the entire length and width of the City of Vicksburg (*ibid.*). House District 54 is similarly irregular. It runs the entire length of the City of Vicksburg, like a reverse question mark, partially surrounding House District 53. By so doing, it separates a large concentration of contiguous majority black census enumeration districts in the north of the *City* from those in the center, and groups them with majority white census enumeration districts in the south and east of the City (*ibid.*).

The end result of the oddly non-compact configuration of House Districts 53, 54 and 55 is that the strength of the black vote in Warren County is diluted. Although blacks constitute 40.8 percent of the total population and 38.15 percent of the voting age population of Warren County, and two-thirds of the black population of Warren County is compactly concentrated in the City of Vicksburg, none of the

[88] The Court's plan virtually evenly divides the 16 black majority enumeration districts (EDs) between District 53 and 54. District 54 has 4 such EDs and 2/3 or more of three other EDs within its borders. District 53 has 7 black majority EDs and 2/3 of one other such ED within its borders. The remaining black majority ED is approximately evenly divided between the two districts.

three House Districts has a black population or voting age population majority.[89]

The alternative plan for Warren County proposed by the plaintiffs is far more geographically compact than the court's plan, does not unnecessarily carve up contiguous concentrations of majority black census enumeration districts,[90] and is wholly consistent with the district court's guidelines (Brief App. C-3, C-4). The Special Master in his December 8, 1976 report (III A. 261-278) called plaintiffs' districting "absolute gerrymandering" (*id.* at 275), but did not explain why such a compact plan is a gerrymander while the oddly shaped districts adopted by the court are not—except to suggest that one would not expect to find a heavily majority black district in a county with "only 40.8% [black] population" (*ibid.*). We disagree. Given the high degree of concentration of black population, we would expect at least one out of three districts to be substantially black majority if the districts are drawn fairly.[91] The record does not

[89] The three districts are 39.4, 39.2 and 40.3 percent black VAP (Brief App. C-5).

[90] Plaintiffs' plan groups most of the black majority census enumeration districts in District 54. District 54 had 9 such EDs and 4/5 or more of three more black majority EDs within its boundaries. District 53 has one black majority ED and 4/5 of another within its boundaries. One ED is evenly divided between Districts 53 and 54, and another is evenly divided between Districts 54 and 55.

[91] Plaintiffs' plan has one district (54) with a black VAP majority of 56.6 percent (Brief App. C-5).

reflect to what extent the court relied on the Special Master's report.

c. *Forrest County* (see Brief App. C-6, C-7, C-8). Forrest County has a total population of 57,849, a black population of 14,151 (24.5 percent), and a black voting age population of 20.7 percent. The court's plan also unnecessarily fragments the black population in Forrest County. It continues the dilution of black voting strength that existed under the 1975 legislative plan and the district court's temporary plan in which Forrest County was a part of a white majority, multi-member district.[92]

The blacks in Forrest County are concentrated in four contiguous areas. Three such areas—encompassing eight majority black census enumeration districts—are in the City of Hattiesburg and one (composed of three majority black census enumeration districts) is immediately south of Hattiesburg (Brief App. C-6 and C-7). Although Forrest County has 20.7 percent black VAP, and one would ordinarily expect that one of four districts (districts 103, 104, 105 and 106) would be majority black, under the court's plan no district has more than 35.4 percent black VAP (Brief App. C-8).

The fragmenting of the black voting strength is achieved by dividing black concentrations between District 105 and District 103. District 105, which begins in the heavily white area 15 miles south of

[92] Under the prior plans Forrest County was combined with Lamar County in District 39, electing four representatives at-large. That district had a black VAP of 18.95 percent.

Hattiesburg, encompasses the group of blacks living south of Hattiesburg, on the western edge of the county, spreads east within the city, thus avoiding the concentration of blacks in the northern part of Hattiesburg, and continues to the majority white eastern edge of this county, which is cut off from the rest of the district by District 103 (Brief App. C-6, C-7). District 103 begins in heavily white west Hattiesburg, cuts diagonally across Hattiesburg dividing the black concentrations into two groups and encompasses a virtually all-white area east of the city in an elongated, oddly shaped district (*ibid.*).

The alternative plan proposed by the United States avoids this fractionalization of concentrations of blacks (Brief App. C-6, C-7). District 103 under the alternative plan is 61.1 percent black VAP (Brief App. C-8). It is a relatively compact district, encompassing the area south of Hattiesburg and the eastern part of the city, thus avoiding a division of the black concentrations (Brief App. C-6, C-7).[93] Neither the

[93] According to our calculations, the district court's plan for Forrest County and adjoining counties has a total variance of 18.2 percent (Brief App. C-8). Although the court's order of September 8, 1976, indicates that the total variance is 4.4 percent (Brief App. C-8), as noted above, the court has not disclosed the basis for its figures or the manner in which they were derived. The alternative plan submitted by the United States in the district court has a total variance of 15.6 percent, rather than 11.7 percent, as we believed at the time of its submission. Although this variance is lower than that of the court's plan we believe it can be reduced even further to 8.85 percent by transferring Camp precinct from

district court nor the special master explained their rejection of the alternative plan.

d. *Washington County* (see Brief App. C-9, C-10, C-11). Washington County has a total population of 70,581, of which 54.5 percent (38,460) is black, and a black VAP of 49.2 percent. Issaquena County has a total population of 2,737, of which 62 percent is black (1,698), and a black VAP of 54.9 percent. These counties constitute another area where the court's plan unnecessarily fragments the black population and thereby dilutes black voting strength. These counties were combined into a white VAP majority, multi-member House district under the 1975 legislative plan and the court's temporary plan.[94] The districts in these counties are somewhat different from those discussed above in that all of the four districts in the district court's final plan have substantial black populations, two of them having slight black VAP majorities. Our calculations provide black VAP figures for the four districts as follows: District 32—53.1 percent; District 33—50.9 percent; District

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District 105 to District 103. With that minor change, the relevant statistics for Districts 103 and 105 are:

House District	Total Population	Black Population	% Black	Black VAP	% Black VAP	% Deviation
103	18,578	11,247	60.5	6,379	55.4	+2.2
105	17,432	2,377	13.6	1,348	11.3	−4.1

[94] Under the prior plans, Washington and Issaquena Counties were confined to District 15, electing four representatives at-large. The VAP of District 15 was 49.4 percent black.

34—49.9 percent; and District 35—47.1 percent.[95] For the reasons explained above (see pp. 52-53, *supra*), even the slight majorities are not, given the history of discrimination against blacks, working majorities. That is, as a practical matter, blacks will not have an effective opportunity to prevail in an election in any of the four districts in these two counties, even though Washington County has a black VAP of 49.2 percent and Issaquena County is almost 55 percent black VAP.

This unexplained fragmentation of the blacks in these counties is achieved in two ways. First, all four districts run into the City of Greenville and divide the black population of that city into four parts (Brief App. C-9, C-10). Because the city is heavily populated in comparison with the rural area of Washington County, the division of the city's black population into four districts results in no substantially black majority district in Washington County.

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[95] The district court characterized all four districts as majority black (III A. 135). This difference is, in part, attributable to the court's concentration on population, rather than voting age population, figures. It is mathematically impossible for all four districts in a majority white VAP area to have majority black VAPs. Since estimates have been used both by the court and the parties, it is impossible to determine with certainty the exact population of these districts. Our figures, however, indicate that two of the four districts have white and two have black VAP majorities. The court did not discuss voting age population and, therefore, its figures provide no basis for judging dilution of black voting strength. Moreover, even if all four districts had bare black majorities, we believe black voting strength would be diluted.

Second, Issaquena County, while almost 55 percent black VAP, must be combined with part of Washington County because it has insufficient population to constitute a district. In the court's plan, however, it is combined in District 32 with part of the white areas of Greenville and some of the few rural majority white enumeration districts to reduce the district's black VAP to 53.1 percent.

The alternative plan proposed by plaintiffs and supported by the United States avoids this fragmentation by dividing the black population of Greenville into only two parts (Brief App. C-9, C-10). Hence Districts 34 and 35 have black VAP populations of 61.6 percent and 57.9 percent, respectively. In addition Issaquena County is grouped in District 32 with the rural southern and eastern part of Washington County with a resulting black VAP of 59.9 percent. Accordingly, the alternative plan avoids the district court's fractionalization of the black voting strength in these two counties with heavily black concentrations.

e. *Jefferson and Claiborne Counties* (see Brief App. C-12 and C-13). Jefferson and Claiborne Counties are contiguous heavily black majority counties on the western border of Mississippi. Claiborne has a total population of 10,086 of which 7,522 (74.6 percent) is black and a black VAP of 71.3 percent. Jefferson has a total population of 9,295, of which 6,996 (75.3 percent) is black, and a black VAP of 69.3 percent. In the 1975 legislature and the court's 1975 temporary plan for the Senate, the two counties were

split into two multi-member white majority districts.[96] The court's final Senate plan, while converting the two districts to single-member districts, continues the dilution of black voting strength by combining the blacks of these counties with largely white areas of other counties.

Claiborne County is combined with Beat 3 of Copiah County and Lincoln County to make a white majority district (60.4 percent white VAP). Jefferson County is combined with Beats 1, 2, 4 and 5 of Copiah County to make a district with a slight black majority (52.1 percent black VAP) (Brief App. C-12). Seven of the eight plans proposed by the United States and plaintiffs avoid this fragmentation of blacks by combining Claiborne and Jefferson in one district.[97] The County Boundary Plan submitted by the United States is illustrative (Brief App. C-12). It combines the two counties with Copiah County to form a 55 percent black VAP district. This district

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[96] Claiborne, Copiah, Lincoln and Simpson counties were combined in District 24, electing two senators. Jefferson was combined with Adams, Amite, Franklin, and Wilkinson Counties to elect two senators in District 25. The black voting age populations of Districts 24 and 25 were 37.1 percent and 47.9 percent, respectively.

[97] R. Doc. 151, Henderson Senate Plan, Exh. P-8, Hearing of May 7, 1975, at Ex. 2; Kirksey Senate Plan, I A. 32; R. Doc. 205, County Boundary Plan, Plaintiffs' Submission of Permanent Legislative Reapportionment Plans, at Ex. 2; Modified Henderson Senate County Boundary Plan, III A. 189; R. Doc. 173, State Modified Plan for Senate, Exh. J-1; Senate Restricted Fractionalization Plan, III A. 51; United States' Senate County Boundary Plan, III A. 28.

is more compact than the court's districts. The court gives no explanation for rejecting this district and in our view it was error for the court to fractionalize the black voting strength of Jefferson and Claiborne Counties in its Senate plan.[88]

For the foregoing reasons, we believe that the district court's final plan is defective in the districts discussed above.

II. WITH FORMULATION OF THE FINAL PLAN, SPECIAL ELECTIONS ARE REQUIRED IN CERTAIN DISTRICTS TO REMEDY, WITHOUT FURTHER DELAY, THE DILUTION EXISTING UNDER PRIOR PLANS.

The final plan ordered by the district court is not to be implemented until the 1979 elections for the 1980 legislature (III A. 232). Until the 1980 legislature is seated, the state will continue to be governed by the legislature elected under the 1975 court-ordered temporary plan.

We have shown (*supra*, pp. 66-73; 49-51) that the 1975 temporary plan operated to dilute black voting strength in Mississippi by barring black participation in "the political process in a reliable and meaningful manner." *White* v. *Regester*, *supra*, 412 U.S. at 767.

We have also recounted the State's long history of discrimination in voting (see Brief App. A). Although blacks have been free to register and vote in recent years with the assistance of federal ex-

[88] The two counties constitute House District 81, where the court has denied special elections. See pp. 26 n. 25, 27.

aminers, there remain present effects of that past discrimination. Current lower registration and voting by blacks is, as this Court recognized in *White* v. *Regester*, *supra*, 412 U.S. at 768, evidence of those effects. Moreover, as in the Texas county involved in *White* v. *Regester*, the legacy of discrimination is presently felt in the racial polarization exhibited by racial bloc voting in Mississippi.

Thus, if special elections are not held in districts where a long-delayed proper remedy for discriminatory districting is now at hand, vindication of the fundamental personal rights involved in reapportionment, see *Reynolds* v. *Sims*, *supra*, and eradication of the effects of the state's prior policy of disfranchisement of blacks will once again be frustrated until the quadrennial election for the 1980 legislature.

When the district court previously postponed devising the final plan and ordering necessary special elections, this Court in *Connor* v. *Coleman*, *supra*, 425 U.S. at 679, ruled that "the District Court should in the circumstances promptly carry out the assurance given in its order of January 29, 1976, to 'bring this case to trial forthwith * * *' and schedule a hearing to be held within 30 days on all proposed permanent reapportionment plans to the end of entering a final judgment embodying a permanent plan reapportioning the Mississippi Legislature in accordance with law to be applicable to the election of legislators in the 1979 quadrennial elections, and also ordering any necessary special elections to be held to coincide with the November 1976

Presidential and congressional elections, or in any event at the earliest practicable date thereafter."

The district court did not formulate the final plan in time to hold special elections to coincide with the Presidential elections. Instead, relying on its view that the 1975 temporary plan met all constitutional standards, it ruled "that the only available thesis for ordering special elections in any of the newly formulated legislative districts would be where required to remedy any impermissible dilution of black voting strength in the temporary plan when compared with the permanent plan established for the 1979 elections" (III A. 224). It concluded that in the Senate no elections were necessary because "[e]very such district with a black population majority was part of a black majority district in 1975" (III A. 226). In the House it ordered special elections in two districts —79 (ten precincts in Lauderdale County) and 97 (Wilkinson County and three beats in Amite County) —that were carved out of white population majority, multi-member districts (III A. 227, 228).

The district court's reasons for refusing the requests of plaintiffs and the United States to order special elections in other districts were inadequate. It should have been guided by two equitable considerations. First, special elections should be held in all districts that were changed from majority white to majority black districts. Second, considering the uncontradicted evidence of racial bloc voting, special elections should also be held where a significant increase in black voting age population in a district,

and the change from a multi-member to single member district, will permit blacks to have a full and fair opportunity to vote for representation in the current legislature. Otherwise, the exaggerated influence of white voters in those districts will continue in the legislature until 1980.

A. The District Court's Criteria For Refusing To Order Special Elections Were Erroneous.

The reasons given by the court for rejecting the requests of plaintiffs and the United States for additional special elections to remedy dilution existing under the temporary plan were: (1) new districts with black population majorities were part of black population majority districts under the temporary plan (III A. 228); (2) special elections to remedy dilution in certain districts would necessitate special elections in other districts because their representation would be affected (III A. 227); and (3) in the case of House District 3, a white candidate received more votes than a black candidate in the 1975 general election in the precincts included in the new district (III A. 228). These considerations are inadequate grounds for denying the equitable remedy of special elections.

Arguably, special elections should have been ordered in all of the newly created single-member districts throughout the state so that each district will be represented immediately by someone elected pursuant to a constitutional apportionment plan. Practical considerations, however, call for a balancing of this ideal against disruption of the state's regular election

schedule and legislative business. These practical considerations, however, do not, in the circumstances of this case, with more than two years still pending before the next regularly scheduled election, warrant the failure to order special elections in those districts where it can fairly be said that voters have suffered significant, tangible injury to their voting rights. See *Town of Sorrento* v. *Reine*, 425 U.S. 946; *Hadnott* v. *Amos*, 394 U.S. 358; see also *Tombs* v. *Fortson*, 241 F. Supp. 65, 71-72 (N.D. Ga.), affirmed, 384 U.S. 210; *Drum* v. *Seawell*, 249 F. Supp. 877, 881-882 (M.D. N.C.), affirmed, 383 U.S. 831; *Mann* v. *Davis*, 238 F. Supp. 458, 460 (E.D. Va.), affirmed *sub nom. Hughes* v. *WMCA*, 374 U.S. 694.[99]

In weighing these considerations it must be noted that the state has repeatedly failed to offer an acceptable plan which would have made a court-ordered plan, and special elections, unnecessary. While special elections will no doubt cause minor disruptions of normal state legislative processes, there has been no showing that they will cause any substantial injury that would outweigh the need for prompt vindication of the voting rights of the black citizens of Mississippi that have long been abridged.

The importance of holding prompt elections under a single-member district plan that affords blacks an

[99] See also, *Keller* v. *Gilliam*, 454 F. 2d 55 (C.A. 5); *Toney* v. *White*, 488 F. 2d 310 (C.A. 5) (*en banc*); *Hall* v. *Issaquena County*, 453 F. 2d 404 (C.A. 5); *Hamer* v. *Campbell*, 358 F. 2d 215 (C.A. 5), certiorari denied, 385 U.S. 851.

equal opportunity in the electoral process is illustrated by experience with the implementation of single-member districts for the House seats from Hinds County in the 1975 temporary plan. Although only one black member had previously been elected to the Mississippi House of Representatives since Reconstruction, in the 1975 election, three blacks were elected to the House from newly created black majority single-member districts in Hinds County. On the other hand, the statewide experience of blacks under the temporary plan reflects the deficiencies of that plan, for these were the only four blacks elected to the 122-member House. The final plan remedies many of the deficiencies; but special elections are needed to carry out the promise that the final plan holds.

B. Special Elections Should Be Ordered In Districts Changed To Black Voting Age Majorities, And In Districts In Which The Change From Multi-member To Single-member Representation Was Accompanied By A Significant Increase In Black Voting Strength.

1. *Changes from white to black voting age majorities.*

The district court erred in using total population rather than voting age population statistics in determining which districts were changed from white majority to black majority. As we have shown (pp. 51-52, *supra*), voting age population statistics are the proper measure in a racial dilution case because it is the cancellation or minimization of a racial group's voting strength that is being measured. Accordingly, the district court's criterion that special elections

should be held where single-member, black population majority districts were carved out of multi-member white population majority districts (III A. 227, 228) should be modified to use voting age population rather than total population in computing the racial compositions of the districts. Under this modified criterion, special elections should be held in House Districts 47, 52, 81, and 89,[100] in addition to those the district court ordered in House districts 79 and 97.[101]

The difference in the way Noxubee County is treated in the temporary plan and the way it is treated in district 52 of the final plan is illustrative of the need for special elections under this criterion. At the time of the formulation of the temporary plan, the district court recognized that Noxubee County and Kemper County, which adjoins Noxubee on the South, were "the only two black majority counties in East Mississippi" (II A. 221). Noxubee,

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[100] The statistics regarding these districts are found at pp. 68-69, nn. 58, 59, *supra*.

[101] Statistics for districts 79 and 97 are found at p. 68, n. 58, *supra*.

This criterion would also require special elections in House districts 32 and 33, but as stated above (pp. 88-89, *supra*) those districts in the court's final plan are not adequate to eliminate the dilution of black voting strength in Washington County. Accordingly, we are asking that new districts be fashioned rather than that special elections be held under the final plan.

however, was submerged into a district with Oktibbeha County—majority white and twice the size of Noxubee—for the election of two representatives. The district had a black voting age population of 35.8 percent. The court acknowledged that this district "is not satisfactory" (*id.* at 222). Noxubee was also combined with Lowndes and Oktibbeha Counties to elect another representative in a floterial district, having a black voting age population of 27.9 percent. The court stated that Noxubee, along with Kemper, was in a "peculiar situation" to which "there are not presently viable answers * * *" (*ibid.*). The court said, however, that it would give the situation "top priority when we come to consider the permanent plan" (*ibid.*).

In the final plan Noxubee County is combined with two precincts of Lowndes County to constitute House district 52, which has a black voting age population of 61.3 percent. Thus, the final plan remedies the dilutive situation that the court recognized as existing for Noxubee County under the temporary plan. The reasons given by the district court for refusing to order special elections for district 52 were (III A. 226-227):

> The 9,397 black citizens of Noxubee County, in a county with not enough population of its own to elect one Representative, took part in the election of three Representatives, two of them coming from a district which was 55% white and 45% black. A special election in new District 52 would necessitate special elections in new

> Districts 43, 44, 45, and 46 [which contain the remainder of districts 23, 23A and 23B under the temporary plan], of which Noxubee County is not a part.

These reasons are inadequate (p. 103, *infra*) and at odds with the court's statements when formulating the temporary plan that relief from the dilutive situation in Noxubee County was needed (see p. 65 n. 57, *supra*).

The district court gives similar reasons for rejecting special elections in district 81 (Claiborne and Jefferson Counties) (*id.* at 227-228) in which the black voting age population is 70.4 percent. This district was carved out of two multi-member districts having black voting age populations of 44.3 percent and 50.1 percent. As with district 52, the black citizens of district 81 should have an opportunity at a special election to cast their votes without the dilutive effect existing under the prior plans.

The district court did not discuss districts 47 or 89, but special elections in those districts would similarly help remedy the effects of dilution under prior plans.[102]

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[102] District 89 (part of Adams County) has only a 50.8 percent black voting age population compared with 44 percent under the temporary plan. In our view, this change is too small to warrant a special election, if no other special election were held. If, however, as we suggest, special elections are to be held in other districts, a special election here would not cause undue disruption and would be justified.

2. Significant increases in black voting age population.

Considering the uncontradicted evidence of racial bloc voting, special elections should also be held in other districts in which a significant increase in the black voting age population and a change from multi-member to single-member districts will permit blacks to exert their full and fair impact on the election. In these districts blacks had a slight voting age majority in a multi-member district under the temporary plan. While the need for special elections in these districts may be said to be somewhat less than in those districts in which there was a change from a white voting age majority to a black voting age majority, the history of discrimination in Mississippi made the prior slight black majority in these districts ineffective (see pp. 52-53, *supra*).

For example, House district 37 has a black voting age population of 63.0 percent under the final plan. It was carved out of a multi-member district, electing three representatives, with a black voting age population of 50.1 percent. The lower registration, lower turn-out, and difficulty of political organization for blacks in Mississippi, all of which result at least in part from past discrimination (see pp. 41-42, *supra*) make the district under the temporary plan an effective white majority district. Accordingly, a special election in the new district will play the same role as special elections in the districts discussed above. Under this principle, special elections should be also held in House districts 3, 8, 16, 22, 24, 25,

and in Senate districts 15, 16, and 28.[103] Because the increase in black voting age population is small in House district 25 and Senate districts 15, 16 and 28, we would not seek special elections in those districts if such elections were not required in other districts.[104] However, in circumstances where other special elections are being held the added disruption would be slight, and the division between blacks and whites in those districts is so close that the slight increase in black voting strength might affect the outcome of the election.

3. *Other considerations.*

Special elections might also be ordered in several other districts which, although not warranting special elections under the above criteria were previously combined with districts in the temporary plan that do warrant special elections. The district court used the interrelationship between such districts and the districts otherwise requiring special elections as a reason for declining to order special elections in certain districts.

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[103] The statistics for these districts are found at pp. 71-72 n. 60, *supra*. The district court rejected special elections for district 3 (Marshall County) because a black candidate running county-wide as an independent in the general election failed to carry a majority in the area which comprises new district 3 (III A. 228). New district 3 has a more than six percent greater black majority than did the county. Voters in this new undiluted district should have an opportunity to elect the representative of their choice.

[104] Statistics for these districts are found at pp. 71-72 n. 60, *supra*.

This interrelationship is not a sufficient reason to refuse to order special elections where they are needed. The holding of additional special elections in the related districts would not harm anyone's rights. They would permit additional voters to be represented by persons selected pursuant to a lawful plan.

The district court may also have to consider whether special elections are required where two incumbents are residing in the same new district, and a special election is held in a different new district but one which was formerly represented by the two incumbents. In such a situation, the number of representatives in the legislature would exceed 122 unless a special election is held in the new district in which the two incumbents live (III A. 227-229).

In our view, the district court on remand should decide, in light of these considerations and of various local circumstances, where such additional special elections are required.

CONCLUSION

The judgment of the district court should be affirmed in part, reversed in part, and vacated in part. The cause should be remanded to the district court for implementation of the districting plans specified in this brief for Hinds, Jefferson and Claiborne Counties in the Senate and Warren, Forrest, Washington and Issaquena Counties in the House, or of other districting for those counties that does not dilute black voting strength. The district court should also be instructed to order special elections, to occur

this year, in the new districts drawn in those counties to avoid dilution, in House Districts 3, 8, 16, 22, 24, 25, 47, 52, 79, 81, 89 and 97 and in Senate Districts 15, 16 and 28, as well as in such additional districts as are required because of their relationship to the foregoing districts.

Respectfully submitted.

DANIEL M. FRIEDMAN,
Acting Solicitor General.

J. STANLEY POTTINGER,
Assistant Attorney General.

LAWRENCE G. WALLACE,
Deputy Solicitor General.

HOWARD E. SHAPIRO,
Assistant to the Solicitor General.

BRIAN K. LANDSBERG,
JOHN C. HOYLE,
JESSICA DUNSAY SILVER,
VINCENT F. O'ROURKE,
Attorneys.

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APPENDICES

TABLE OF CONTENTS

	Page
A. Background of Voting Discrimination in Mississippi	1a
I. Racially discriminatory voting practices in Mississippi	1a
A. Apportionment	3a
1. The Constitution of 1890	3a
2. Recent legislative reapportionments	13a
B. The poll tax	28a
C. The literacy test	29a
D. The white primary	33a
II. The effect of the Civil Rights Acts	35a

CITATIONS

Cases:

Allen v. *State Board of Electors*, 393 U.S. 544	37a
Connor v. *Waller*, 396 F. Supp. 1308	19a
Evers v. *State Board of Elections Commissioners*, 327 F. Supp. 640, appeal dismissed, 405 U.S. 1001	37a
Gaston County v. *United States*, 395 U.S. 285	31a
Mississippi Freedom Democratic Party v. *Johnson*, 299 F. Supp. 93	37a
Moore v. *LeFlore County Board of Election Commissioners*, 361 F. Supp. 603, affirmed, 502 F. 2d 621	28a

Cases—Continued — Page

Peay v. *Cox*, 190 F. 2d 123, certiorari denied, 342 U.S. 896 — 30a
Perkins v. *Matthews*, 400 U.S. 379 — 37a
Ratliff v. *Beale*, 74 Miss. 247, 20 So. 865 — 2a, 3a, 6a, 29a
Smith v. *Allwright*, 321 U.S. 649 — 33a
South Carolina v. *Katzenbach*, 383 U.S. 301 — 1a, 2a, 32a, 35a, 36a
Stewart v. *Waller*, 404 F. Supp. 206 — 1a, 28a, 37a
United States v. *Dogan*, 314 F. 2d 767 — 29a
United States v. *Duke*, 332 F. 2d 759 — 31a, 32a
United States v. *Holmes County, Mississippi*, 385 F. 2d 145 — 29a
United States v. *Lynd*, 301 F. 2d 818, certiorari denied, 371 U.S. 893 — 31a, 32a
United States v. *Lynd*, 349 F. 2d 790 — 31a, 32a
United States v. *McClellan*, 248 F. Supp. 62 — 31a, 32a
United States v. *Ramsey*, 331 F. 2d 824 — 32a
United States v. *State of Mississippi*, 229 F. Supp. 925, reversed and remanded, 380 U.S. 128 — 1a, 2a, 30a, 31a, 33a, 34a
United States v. *State of Mississippi*, 256 F. Supp. 344 — 35a, 36a
United States v. *State of Mississippi*, 339 F. 2d 679 — 32a
United States v. *State of Mississippi*, 11 Race Rel. L. Rep. 837 — 29a, 36a

Constitutions and statutes:

United States Constitution, Fifteenth Amendment — 1a, 38a

Constitutions and statutes—Continued — Page

Miss. Const. (1890):
Art. 5, § 140 — 4a
Art. 5, § 141 — 4a
Art. 12, § 243 — 28a
Art. 12, § 244 — 29a
Art. 13, § 254 — 4a, 6a, 13a
Art. 13, § 255 — 4a, 11a, 13a
Art. 13, § 256 — 5a, 6a, 13a

Miss. Const. (1890), as amended:
Art. 12, § 243 — 29a
Art. 13, § 254 — 13a, 14a
Art. 13, § 255 — 13a, 14a
Art. 13, § 256 — 13a

Civil Rights Act of 1957, 71 Stat. 634 — 35a, 36a
42 U.S.C. (1958 ed.) 1971(c) — 35a

Civil Rights Act of 1960, 74 Stat. 86 — 35a, 36a
42 U.S.C. (1958 ed. Supp. V) 1971 (e) — 35a
42 U.S.C. 1974 — 35a

Civil Rights Act of 1964, 78 Stat. 241 — 35a, 36a
42 U.S.C. 1971 — 36a
42 U.S.C. 1971(a)(2)(A) — 35a
42 U.S.C. 1971(a)(2)(B) — 35a
42 U.S.C. 1971(a)(2)(C) — 35a
42 U.S.C. 1971(c) — 35a

Voting Rights Act of 1965, 79 Stat. 437, as amended, 42 U.S.C. 1973, *et seq.* — 2a, 35a, 36a
42 U.S.C. 1973-1973p — 36a
42 U.S.C. 1973d — 37a
42 U.S.C. 1973f — 38a

Constitutions and statutes—Continued — Page

Miss. Laws, 1882, Ch. XXVIII — 11a
Miss. Laws, 1884, Ch. LI — 11a
Miss. Laws, 1890, Ch. 33 — 11a
Miss. Laws, 1902, Ch. 66 — 33a
Miss. Laws, 1948, Ch. 309 — 34a
Miss. Laws, 1952, Ch. 464 — 34a
Miss. Laws, 1954, Ch. 427 — 30a
Miss. Laws, 1962, 2d Ex. Sess.:
- Ch. 57 — 13a, 14a
- Chs. 569-573 — 32a

Miss. Laws, 1963, 1st Ex. Sess., Ch. 34, §§ 1-7 — 13a
Miss. Laws, 1963, Ex. Sess., Ch. 34, §§ 1-7 — 14a
Miss. Laws, 1965, Ex. Sess., Ch. 40 — 32a
Miss. Laws, 1966, Ex. Sess., Ch. 41, §§ 1-2 — 13a, 15a
Miss. Laws, 1971, Ch. 394, §§ 1-2 — 13a, 17a
Miss. Laws, 1973:
- Ch. 304 — 13a, 19a
- Ch. 305 — 13a, 19a
- Ch. 456 — 13a, 19a
- Ch. 457 — 13a, 19a

Miss. Laws, 1975:
- Ch. 484, § 1 — 13a, 19a
- Ch. 510, § 1 — 13a, 19a

Miss. Code Ann., § 3273 (1942) — 35a
Miss. Code Ann., § 3129 (Recompiled 1956) — 34a
Miss. Code Ann., § 3209.6 (Supp. 1962) — 35a

Constitutions and statutes—Continued — Page

Miss. Code Ann. (1972):
- § 5-1-1 — 17a
- § 5-1-3 — 17a
- § 21-3-7 — 28a

Miscellaneous:

Biennial Report of the Secretary of State of Mississippi, 1896-1897, pp. 66-67 — 4a, 7a, 12a
Ethridge, *Mississippi Constitutions* (1928) — 5a, 11a, 13a
Hearings on S. 1564 before the Senate Committee on the Judiciary, 89th Cong., 1st Sess. (1965) — 32a
Hearings on H.R. 939, H.R. 2148, H.R. 3247, H.R. 3501 before a Subcommittee of the House Committee on the Judiciary, 94th Cong., 1st Sess. (1975) — 37a, 38a
Kirwan, *Apportionment in the Mississippi Constitution of 1890*, 14 Journal of Southern History 235 (1948) — 3a
Kirwan, *Revolt of the Rednecks, Mississippi Politics: 1876-1925* (1964) — 1a, 2a, 29a, 30a
McNeily, *History of the Measures Submitted to the Committee on Elective Franchise, Apportionment, and Election in the Constitutional Convention of 1890*, Publication of the Mississippi Historical Society (1902) — 4a-5a
Mississippi Legislature, House Journal, 1890, pp. 3-5 — 7a

Miscellaneous—Continued Page

6 *National Roster of Black Elected Officials*, Joint Center for Political Studies, Washington, D.C. (August, 1976) 2a
Stone, *The Basis of White Political Control in Mississippi*, 6 Journal of Mississippi History 232 (1944) 3a, 5a
The Clarion-Ledger, Jackson, Mississippi:
July 31, 1890, p. 4, col. 3 ..... 3a
September 18, 1890, p. 5, col. 3 ..... 4a
September 18, 1890, p. 8, col. 4 ..... 4a
September 25, 1890, p. 1, col. 3 ..... 4a
September 25, 1890, p. 1, col. 5 ..... 4a
September 25, 1890, p. 3, col. 5 ..... 4a
October 2, 1890, p. 2, col. 1 ..... 5a
United States Bureau of the Census, *Census of Population: 1960*, Vol. I, *Characteristics of the Population*, Part 26, Mississippi, Table 27, pp. 61-81 ..... 15a, 16a
United States Bureau of the Census, *Census of Population: 1970, General Population Characteristics*, Mississippi, Table 35, pp. 87-107 ..... 18a
Voting in Mississippi, A Report of the United States Commission on Civil Rights (1965) ..... *passim*
Wharton, *The Negro in Mississippi, 1865-1890* (Harper Torchbook ed. 1965) 1a

TABLE OF CONTENTS—Continued

Page

B. Summary of Sources and Methodology for Statistics and Maps 39a

C. Maps and Statistical Charts Comparing Certain Districts in the Court's Final Reapportionment Plan and Alternative Plans 45a

1. *Hinds County Senate Districts:* Maps Comparing Court's Final Plan (Districts 31-35) and Alternative Plan (Districts 28-32) 46a

2. *Hinds County Senate Districts:* Comparative Description and Statistical Analysis of Court's Final Plan (Districts 31-35) and Alternative Plan (Districts 28-32) 47a

3. *Warren County House Districts (53-55):* Maps Comparing Court's Final Plan and Alternative Plan 50a

4. *City of Vicksburg (Warren County) House Districts (53-55):* Maps Comparing Court's Final Plan and Alternative Plan 51a

5. *Warren County House Districts (53-55):* Comparative Description and Statistical Analysis of Court's Final Plan and Alternative Plan 53a

6. *Forrest County House Districts (103-106):* Maps Comparing Court's Final Plan and Alternative Plan 56a

TABLE OF CONTENTS—Continued

Page

7. *City of Hattiesburg (Forrest County) House Districts:* Maps Comparing Court's Final Plan (Districts 103-105) and Alternative Plan (Districts 103-106) 57a

8. *Forrest County House Districts (103-106):* Comparative Description and Statistical Analysis of Court's Final Plan and Alternative Plan 59a

9. *Washington County House Districts:* Maps Comparing Court's Final Plan (Districts 32-35) and Alternative Plan (Districts 32, 33, 35) 62a

10. *City of Greenville (Washington County) House Districts:* Maps Comparing Court's Final Plan (Districts 32-35) and Alternative Plan (Districts 33-35) 63a

11. *Washington County House Districts (32-35):* Comparative Description and Statistical Analysis of Court's Final Plan and Alternative Plan 65a

12. *Claiborne County and Jefferson County Senate Districts:* Maps Comparing Court's Final Plan (Districts 37-38) and Alternative Plan (District 30) 68a

TABLE OF CONTENTS—Continued

Page

13. *Claiborne County and Jefferson County Senate Districts:* Comparative Description and Statistical Analysis of Court's Final Plan (Districts 37-38) and Alternative Plan (District 30) 69a

D. Statutes Involved 73a

APPENDIX A

BACKGROUND OF VOTING DISCRIMINATION IN MISSISSIPPI

I. RACIALLY DISCRIMINATORY VOTING PRACTICES IN MISSISSIPPI

The Fifteenth Amendment to the United States Constitution guaranteeing that "[t]he right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude" was ratified in 1870. Within a short time many of the states of the Confederacy including Mississippi began to enact legislation designed to prevent Negroes from voting. *South Carolina* v. *Katzenbach*, 383 U.S. 301. The actions of the State of Mississippi effectively denied black voters access to the political process during the period between 1890 and 1965.[1]

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[1] The history of racial discrimination in the electoral process in Mississippi was recognized by this Court in *South Carolina* v. *Katzenbach*, 383 U.S. 301. It has been cataloged in numerous other sources including the dissenting opinion of Judge Brown in *United States* v. *State of Mississippi*, 229 F. Supp. 925, 983-997 (S.D. Miss.), reversed and remanded, 380 U.S. 128; *Voting in Mississippi*, A Report of the United States Commission on Civil Rights (1965); Kirwan, *Revolt of the Rednecks, Mississippi Politics: 1876-1925* (1964); Wharton, *The Negro in Mississippi, 1865-1890* (Harper Torchbook ed. 1965). It is a history which has resulted in "token participation by blacks in the political process of the state." *Stewart* v. *Waller*, 404 F. Supp. 206 (N.D. Miss.). In 1867 approximately 69 percent of the black voting age population of Mississippi

Prior to enactment of the Voting Rights Act of 1965, 79 Stat. 437, as amended, 42 U.S.C. 1973, *et seq.*, Mississippi employed four devices in discriminating against black participants in the electoral process: (1) a racially discriminatory apportionment of the legislature,[2] (2) an annual poll tax,[3] (3) a literacy test,[4] and (4) a "whites only" primary system.[5] In 1890 the State of Mississippi convened a Convention to enact legislation to disfranchise black voters, *Ratliff* v. *Beale*, 74 Miss. 247, 265-266, 20 So. 865, 868; see *South Carolina* v. *Katzenbach*, *supra*, 383 U.S. at 310, which utilized the first three of these devices. The Supreme Court of the State of Mississippi characterized the purpose and effect of this Convention in 1896, saying:

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was registered to vote. *Voting in Mississippi*, *supra*, at 8. In 1964 only 6.4 percent of voting age blacks in Mississippi were registered to vote. *South Carolina* v. *Katzenbach*, *supra*, 383 U.S. at 313. Between 1900 and 1975 only one black candidate was ever elected to the legislature of the State of Mississippi. (R. Doc. 154, Hearing of May 7, 1975, Tr. at 46). There are currently four black members of the Mississippi House and no black members of the Senate. 6 *National Roster of Black Elected Officials*, Joint Center for Political Studies, Washington, D.C. (August, 1976).

[2] *Ratliff* v. *Beale*, 74 Miss. 247, 265-266, 20 So. 865, 868.

[3] *Ratliff* v. *Beale*, *supra*, 74 Miss. at 268, 20 So. at 868-869; *Voting in Mississippi*, *supra*, at 4-5; Kirwan, *supra*, at 74.

[4] *Voting in Mississippi*, *supra*, at 4-5; Kirwan, *supra*, at 69-74.

[5] *Voting in Mississippi*, *supra*, at 7; *United States* v. *State of Mississippi*, 229 F. Supp. 925, 989 (S.D. Miss.) (Brown, J., dissenting).

> Within the field of permissible action under the limitations imposed by the federal constitution, the convention swept the circle of expedients to obstruct the exercise of the franchise by the negro race.

Ratliff v. *Beale*, *supra*, 74 Miss. at 266, 20 So. at 868.

A. APPORTIONMENT

1. *The Constitution of 1890.*

The apportionment adopted by the Convention was designed to prevent blacks from controlling either the legislature or the executive,[6] even though blacks were

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[6] Although there is some dispute as to whether the apportionment provisions alone would have been completely adequate to bar blacks from power, there is no dispute that that was their purpose. See Kirwan, *Apportionment in the Mississippi Constitution of 1890*, 14 Journal of Southern History 235 (1948); and Stone, *The Basis of White Political Control in Mississippi*, 6 Journal of Mississippi History 232 (1944). The Apportionment Plan submitted by the Franchise Committee was widely debated before it was adopted. *The Clarion Ledger*, a Jackson, Mississippi newspaper, published a coverage of the Convention which included the complete texts of some speeches and significant quotations from other speeches made by delegates to the Convention. *The Clarion-Ledger*, Jackson, Mississippi, July 31, 1890, p. 4, col. 3. The newspaper coverage of the delegates' debates on the apportionment proposal submitted by the Franchise Committee and adopted by the 1890 Convention make it clear that the purpose of the plan was to assure that political control of the state would be held by the whites. For example, one delegate, Mr. Street of Lauderdale County, defended the apportionment because it "* * * is as just as it can be made and at the same time lodge power where it must be with the white people of the state." *The Clarion-*

then a majority of both the population and the voting age population.[7] The Convention intended to achieve this goal by a two-step process. The first step was to be accomplished by the enactment of Miss. Const. Art. 5, §§ 140 and 141 (1890), which required that any state-wide elective official must receive a majority both of the popular vote and of the vote of an electoral college whose numbers corresponded to the House of Representatives apportionment. If any state-wide elective official failed to obtain both majorities, the election would be decided by the House of Representatives. The second step was to be accomplished by apportioning the legislature in Miss. Const. Art. 13, §§ 254 and 255, in such a way that whites would control the House of Representatives and thus both the legislature and the executive.[8]

Ledger, September 18, 1890, p. 8, col. 4. Another supported it because "[i]f it should secure white control of the state, all should be satisfied." *The Clarion-Ledger*, September 18, 1890, p. 5, col. 3. Papers throughout the nation recognized that the purpose of the plan was to maintain power for white counties, *The Clarion-Ledger*, September 25, 1890, p. 1, col. 3, one paper referring to the plan as "the apportionment gerrymander." *Id.* at col. 5. The final argument in support of the plan was made just prior to the Convention vote by Mr. Bell of Kemper who argued of the plan that "no one could deny that the most important department is in the hands of our own race." *The Clarion-Ledger*, September 25, 1890, p. 3, col. 5.

[7] Biennial Report of the Secretary of State of Mississippi, 1896-1897, pp. 66-67.

[8] McNeily, *History of the Measures Submitted to the Committee on Elective Franchise, Apportionment, and Election in the Constitutional Convention of 1890*, 134-135, Publication of the Mississippi Historical Society (1902); Ethridge, *Mississippi Constitutions* 445 (1928). McNeily was a delegate at large at the 1890 Convention.

Miss. Const. Art. 13, § 256, furthered this purpose by dividing the counties of Mississippi into three groups and guaranteeing that each group would always have a minimum of forty-four representatives. The first two groupings were made up predominantly of majority white counties, while the third group was made up entirely of majority black counties. This grouping was intended to guarantee a majority of representatives from majority white counties. The Mississippi Supreme Court, among others,[9] believed

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[9] See Stone, *supra*, at 232. *The Clarion-Ledger*, October 2, 1890, p. 2, col. 1, quotes the *Vicksburg Post* as follows:

> First and foremost, by an ingenious arrangement of the counties and a patent gerrymander of the representation, in a state holding a 60,000 negro majority the legislature is given a white majority in both branches. If all the 60,000 negro majority is voted and honestly counted (and Senator George's purpose in advocating a convention was purification of the ballot box) then the legislature will still have a white majority.
>
> Next, each county is to have as many votes in a so-called Electoral College for state officials as it is entitled to representatives in the Legislature. So that with all the negroes voting and all their votes counted, a minority of voters will elect the state officers. This rests upon the same gerrymander as the Legislative apportionment.
>
> Both the legislative and executive branches of the government are thus secured to the minority of legal voters in the state. This means, of course, the absolute control of the entire state government—executive, legislative and judicial, for the judges and chancellors are appointed by the Governor.

that the plan had achieved its goal, saying in *Ratliff* v. *Beale*, *supra*, 74 Miss. at 266, 20 So. at 868, that:

> If we look at the map of the state and at the census reports showing the racial distribution of our population, and consider these in connection with the apportionment of the constitution, it will at once appear that unless there shall be a great shifting of populations, the control of the legislative department of the state is so fixed in the counties having majorities of whites as to render exceedingly improbable that it can be changed in the near future by the ordinary flow of immigration, or by the growth by births among our own people. The election of the chief executive of the state is also largely affected by the same means. It is in the highest degree improbable that there was not a consistent, controlling, directing purpose governing the convention by which these schemes were elaborated and fixed in the constitution. Within the field of permissible action under the limitations imposed by the federal constitution, the convention swept the circle of expedients to obstruct the exercise of the franchise by the negro race.

The apportionment established by §§ 254 and 256 minimized black voting strength. In the 1890 legislative session which preceded the Convention, majority black voting age population districts had sixty-six representatives in the House, while majority white voting age population districts had fifty-four representatives. Under the revised Constitution black strength was lessened by the addition of thirteen representatives to the legislature, ten from majority

white voting age population districts. Under this plan, majority black voting age population districts would elect 69 representatives and the majority white voting age population districts would elect the remaining 64 representatives.[10]

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[10] The apportionment of the 1890 Mississippi House of Representatives can be seen from the January 7, 1890 roll-call of Representatives-elect of that body. Mississippi Legislature, House Journal, 1890, pp. 3-5. Under this plan black voters could elect 44 representatives from the counties listed in Group III, *infra*. They could also elect representatives in the majority black voting age population counties of Marshall (3), Monroe (3), Clay (2), Grenada (1), Lowndes (3), Oktibbeha (2), Noxubee (3), Kemper (1), Rankin (2) and Carroll (2). Under §§ 254 and 256, black voters could elect 45 representatives in black majority Group III. They could also elect representatives in the black majority counties of Marshall (3), Monroe (3), Clay (2), Grenada (1) plus one floater (1), Lowndes (3), Oktibbeha (2), Noxubee (3), Kemper (2), Rankin (2) and Carroll (2). All statistics are based on the 1890 census as shown in the Biennial Report of the Secretary of State of Mississippi, 1896-1897, pp. 66-67.

GROUPINGS ESTABLISHED BY MISSISSIPPI CONSTITUTION, ARTICLE 13, § 256 (1890)

GROUP I

County	White Male Voting Age Population	Black Male Voting Age Population	Total White Population	Total Black Population
Tishomingo	1,716	177	8,311	991
Alcorn	1,994	656	9,605	3,510
Prentiss	2,227	532	10,833	2,846
Lee	2,682	1,422	12,510	7,520
Itawamba	2,166	173	10,723	985
Tippah	2,053	500	10,026	2,925
Union	2,424	716	11,608	3,998
Benton	1,230	877	5,665	4,920
Marshall	2,170	3,039	9,731	16,312
Lafayette	2,443	1,672	11,700	8,853
Pontotoc	2,201	777	10,585	4,355
Monroe	2,809	3,582	12,109	18,621
Chickasaw	2,796	2,110	8,491	11,400
Calhoun	2,229	619	11,276	3,412
Yalobusha	1,817	1,721	7,683	8,946
Grenada	952	2,085	3,896	11,078
Carroll	1,788	1,965	8,161	10,612
Montgomery	1,660	1,254	7,448	7,011
Choctaw	1,666	445	8,208	2,639
Webster	1,837	513	9,080	2,980
Clay	1,325	2,547	5,624	12,983
Lowndes	1,437	4,412	6,009	21,038
Oktibbeha	1,289	2,141	5,759	11,935
	44,911	33,935	205,041	179,870

GROUP II

County	White Male Voting Age Population	Black Male Voting Age Population	White Population	Black Population
Attala	2,701	1,691	12,742	9,471
Winston	1,469	857	6,987	5,102
Noxubee	1,075	4,312	4,709	22,629
Kemper	1,654	1,751	7,869	10,092
Leake	1,907	973	9,350	5,453
Neshoba	1,641	491	8,351	2,795
Lauderdale	3,507	2,914	14,671	14,990
Newton	2,096	1,162	10,119	6,506
Scott	1,438	866	7,000	4,740
Rankin	1,639	1,825	7,507	10,415
Clarke	1,543	1,356	7,716	8,110
Jasper	1,487	1,256	7,368	7,417
Smith	1,679	284	8,924	1,711
Simpson	1,191	663	6,229	3,909
Copiah	3,073	2,884	14,632	15,601
Franklin	1,171	860	5,484	4,940
Lincoln	2,133	1,412	10,325	7,587
Lawrence	1,246	957	6,240	6,078
Covington	1,053	487	5,319	2,980
Jones	1,346	289	7,082	1,251
Wayne	1,154	719	5,799	4,018
Greene	614	188	2,936	970
Perry	1,013	410	4,582	1,912
Marion	1,314	542	6,530	3,002
Pike	2,390	1,829	10,581	10,622
Pearl River	478	146	2,301	656
Hancock	1,296	577	5,770	2,548
Harrison	2,030	735	9,163	3,318
Jackson	1,688	766	7,814	3,437
	47,026	33,202	224,100	182,260

GROUP III

County	White Male Voting Age Population	Black Male Voting Age Population	White Population	Black Population
Adams	1,620	4,009	6,128	19,903
Amite	1,645	1,903	7,600	10,598
Bolivar	1,246	7,212	3,222	26,758
Claiborne	836	2,155	3,533	10,983
Coahoma	800	4,169	2,445	16,097
DeSoto	1,640	3,547	6,957	17,226
Holmes	1,712	4,750	7,084	23,886
Hinds	2,700	5,566	10,892	28,387
Issaquena	249	2,720	736	11,582
Jefferson	846	2,810	3,589	15,358
Leflore	893	3,494	2,597	14,272
Madison	1,428	3,942	6,031	21,290
Panola	2,062	3,442	9,248	17,729
Quitman	285	587	894	2,392
Sunflower	712	1,810	2,530	6,854
Tallahatchie	1,161	1,944	5,154	9,207
Tate	1,853	2,001	8,495	10,758
Tunica	437	2,797	1,259	10,899
Warren	2,471	5,552	8,803	24,361
Washington	1,700	9,103	4,838	35,576
Wilkinson	928	2,412	3,962	13,630
Yazoo	1,965	5,697	8,690	27,704
Sharkey	378	1,682	1,223	7,159
	29,567	83,304	115,910	382,609

The apportionment of the Senate was also intended to dilute black voting strength. Ethridge, *Mississippi Constitutions* 443 (1928). Prior to the 1890 Convention, the majority black and the majority white voting age population counties each controlled 20 Senate seats.[11] The 1890 Convention increased the number of senators by five, also increasing the number of senators representing majority white voting age population counties by five. Moreover, available statistics show that in a number of instances the 1890 Senate apportionment in § 255 diluted black voting strength in both multi-member and single-member districts by joining majority black counties with larger white majority counties to make up pairings for Senate seats. Majority black Rankin, Kemper, Oktibbeha, Carroll and Clay counties were all diluted in this manner in single-member districts, while majority black Marshall, Tate and Monroe counties were diluted in multi-member districts.[12]

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[11] Miss. Laws, 1882, Ch. XXVIII, as amended, Miss. Laws, 1884, Ch. LI, as amended, Miss. Laws, 1890, Ch. 33.

[12] [See footnote on following page]

[12]

District	Number of Senators	County	Male White Voting Age Population	Male Black Voting Age Population
5	1	Rankin	1,639	1,825
		Smith	1,679	284
			3,318	2,109
15	1	Kemper	1,654	1,751
		Winston	1,469	857
			3,123	2,608
23	1	Choctaw	1,666	445
		Oktibbeha	1,289	2,141
			2,955	2,586
24	1	Clay	1,325	2,547
		Webster	1,837	513
			3,162	3,060
26	1	Carroll	1,788	1,965
		Montgomery	1,660	1,254
			3,448	3,219
36	3	Union	2,424	716
		Tippah	2,053	500
		Benton	1,230	877
		Marshall	2,170	3,039
		Tate	1,853	2,001
			9,730	7,133
38	2	Monroe	2,809	3,582
		Lee	2,682	1,422
		Itawamba	2,166	173
			7,657	5,177

Statistics are based on the 1890 Census as contained in the Biennial Report of the Secretary of State of Mississippi, 1896-1897, pp. 66-67.

The apportionment plan established in Miss. Const. Art. 13, §§ 254-256, was changed only in minor ways [13] not relevant to this case until 1962 when § 256 was repealed and §§ 254 and 255 were substantially amended by Miss. Laws, 1962, 2d Ex. Sess., Ch. 57. Thus, for almost 75 years, the State of Mississippi elected its legislature in accordance with an apportionment plan which avowedly was intended to minimize the effectiveness of black participation in the electoral process and to guarantee white supremacy. Ethridge, *Mississippi Constitutions* 445 (1928).

2. *Recent Legislative Reapportionments.*

In the past fifteen years the Mississippi legislature has enacted major reapportionment legislation five times.[14] In each reapportionment, the legislature diluted the strength of black voters in majority black counties by utilizing, for at least one legislative chamber, a technique first employed by the 1890 Convention, the pairing of majority black counties with

[13] Seven seats were added to the House of Representatives and four seats were added to the Senate to accommodate the seven new counties. In addition some residency requirements were altered, candidates from some districts were required to run from posts, and sub-districts within some counties were created.

[14] (1) Miss. Laws, 1962, 2d Ex. Sess., Ch. 57, effective 1963; Miss. Laws, 1963, 1st Ex. Sess., Ch. 34, §§ 1-7;
(2) Miss. Laws, 1966, Ex. Sess., Ch. 41, §§ 1-2;
(3) Miss. Laws, 1971, Ch. 394, §§ 1-2;
(4) Miss. Laws, 1973, Chs. 304, 305; Miss. Laws, 1973, Chs. 456, 457.
(5) Miss. Laws, 1975, Ch. 484, § 1, and Ch. 510, § 1.

larger majority white counties in single-member and multi-member districts.

a. The 1962 Constitutional Amendment to §§ 254 and 255, Miss. Laws, 1962, 2d Ex. Sess., Ch. 57, as implemented by the legislature in Miss. Laws, 1963, Ex. Sess., Ch. 34, §§ 1-7, was the most thorough reapportioning of that body since 1890. The plan for the House abandoned the technique of pairing counties into districts, while the plan for the Senate increased the number of Senators and thoroughly rearranged many historical county groupings. At least one thing remained constant, however; the pairings in the Senate plan diluted the strength of black majority counties. The black voters of Noxubee and Kemper counties were deprived of their ballot strength in this manner in a single-member district and the black voters of Tallahatchie were deprived in this manner in a multi-member district.[15]

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[15]

1962 APPORTIONMENT

District	Number of Senators	County	White VAP	Non-White VAP*
31	2	Tallahatchie	5,099	6,483
		Yalobusha	4,572	2,441
		Grenada	5,792	4,323
			15,463	13,247
35	1	Oktibbeha	8,423	4,952
		Noxubee	2,997	5,172
			11,420	10,124
37	1	Neshoba	9,143	2,565
		Kemper	3,113	3,221
			12,256	5,786

[Footnote continued on page 15a]

b. In 1966, the Mississippi legislature again reapportioned the Senate and House. Miss. Laws, 1966, Ex. Sess., Ch. 41, §§ 1-2. This plan reinstituted the pairings of counties in multi-member districts in the House. It again combined black majority with white majority counties.[16]

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[15] [Continued]

The statistics are based on the 1960 Census. (United States Bureau of the Census, *Census of Population: 1960*, Vol. I, *Characteristics of the Population*, Part 26, Mississippi, Table 27, pp. 61-81.) The 1960 Census does not break down non-white population by age and race. However, the non-white population in Mississippi at the time of the 1960 Census was generally approximately 99 percent black except in Neshoba County where it was 79.4 percent black, Leake County where it was 93.6 percent black, Kemper County where it was 96.8 percent black and Newton County where it was 94.2 percent black.

[16]

1966 APPORTIONMENT

HOUSE

District	Number of Representatives	Counties	White VAP	Non-White VAP
9	2	Jefferson	1,666	3,540
		Lincoln	11,072	3,913
			12,738	7,453
10	2	Kemper	3,113	3,221
		Neshoba	9,143	2,565
			12,256	5,786
12	3	Claiborne	1,688	3,969
		Warren	13,530	10,726
			15,218	14,695

SENATE

2	1	Benton	2,514	1,419
		Marshall	4,342	7,168
		Tippah	7,513	1,281
			14,369	9,868

[Footnote continued on page 16a]

[16] [Continued]

District	Number of Representatives	Counties	White VAP	Non-White VAP
7	2	Calhoun	7,188	1,767
		Grenada	5,792	4,323
		Tallahatchie	5,099	6,483
		Yalobusha	4,572	2,441
			22,651	15,014
18	1	Noxubee	2,997	5,172
		Oktibbeha	8,423	4,952
			11,420	10,124
20	1	Kemper	3,113	3,221
		Neshoba	9,143	2,565
			12,256	5,786
24	1	Issaquena	640	1,081
		Warren	13,530	10,726
			14,170	11,807
25	4	Claiborne	1,688	3,969
		Hinds	67,836	36,138
			69,524	40,107
31	1	Jefferson	1,666	3,540
		Lincoln	11,072	3,913
			12,738	7,453
33	2	Amite	4,449	3,560
		Franklin	3,403	1,842
		Pike	12,163	6,936
		Wilkinson	2,340	4,120
			22,355	16,458

Statistics are based on the 1960 Census (United States Bureau of the Census, *Census of Population: 1960*, Vol. I, *Characteristics of the Population*, Part 26, Mississippi, Table 27, pp. 61-81.) The 1960 Census does not break down non-white population by age and race. However, the non-white population in Mississippi at the time of the 1960 Census was generally approximately 99 percent black except in Neshoba County where it was 79.4 percent black, Leake County where it was 93.6 percent black, Kemper County where it was 96.8 percent black and Newton County where it was 94.2 percent black.

c. In 1971, the Mississippi legislature was again reapportioned. Miss. Laws, 1971, Ch. 394, §§ 1-2, codified as Miss. Code Ann., §§ 5-1-1 and 5-1-3 (1972); and various black majority counties again were combined with white majority counties.[17]

[17]

1971 APPORTIONMENT

HOUSE

District	Number of Representatives	Counties	White VAP	Black VAP
2	4	Benton	3,012	1,437
		DeSoto	14,158	6,130
		Marshall	5,975	7,578
			23,145	15,145
21	2	Noxubee	3,342	4,713
		Winston	7,776	3,849
			11,118	8,562
26	4 (Floterial)	Rankin	20,604	7,547
		Madison	7,413	9,680
			28,017	17,227
27	5	Issaquena	687	836
		Sharkey	2,113	2,703
		Washington	20,416	19,747
			23,216	23,286
29	3	Claiborne	1,804	4,491
		Warren	17,145	10,574
			18,949	15,065
31	2	Jefferson	1,635	3,685
		Lincoln	12,381	4,309
			14,016	7,994

[Footnote continued on page 18a]

[17] [Continued]

District	Number of Representatives	Counties	White VAP	Black VAP
40	2	Amite	4,768	3,466
		Franklin	3,441	1,728
		Wilkinson	2,426	4,073
			10,635	9,267
		SENATE		
2	2	Marshall	5,975	7,578
		Lafayette	13,391	3,445
		Union	11,127	1,670
		Pontotoc	9,844	1,696
			40,337	14,389
8	1	Tallahatchie	5,202	5,606
		Grenada	7,691	4,601
			12,893	10,207
13	1	Choctaw	4,202	1,203
		Winston	7,776	3,849
		Noxubee	3,342	4,713
			15,320	9,765
15	1	Sharkey	2,113	2,703
		Yazoo	8,416	7,656
		Issaquena	687	836
			11,216	11,195
19	2	Rankin	20,604	7,547
		Madison	7,413	9,680
			28,017	17,227
27	1	Lincoln	12,381	4,309
		Franklin	3,441	1,728
		Jefferson	1,635	3,685
			17,457	9,722
29	2	Amite	4,768	3,466
		Pike	12,637	7,473
		Walthall	5,153	2,612
		Wilkinson	2,426	4,073
			24,984	17,624

Statistics are based on the United States Bureau of Census *1970 Census of Population, General Population Characteristics*, Mississippi, Table 35, pp. 87-107.

d. The apportionment plans enacted in 1973, Miss. Laws, 1973, Chs. 304, 305; Miss. Laws, 1973, Chs. 456, 457; and in 1975, Miss. Laws, 1975, Ch. 484, § 1, and Ch. 510, § 1, were an attempt to comply with the one person-one vote requirement. *Connor* v. *Waller*, 396 F. Supp. 1308, 1310 (S.D. Miss.). They followed the prior pairings of counties.

There were 17 counties in Mississippi with a majority black voting age population. With respect to the House, they were treated in five ways:

(1) combined with white voting age majority counties to form white voting age majority districts—

Districts	Number of Representatives	Counties	WVAP	BVAP	% BVAP
3	3	DeSoto	14,158	6,130	30.21
		Marshall	5,975	7,578	55.91
			20,133	13,708	40.51
15	4	Issaquena	687	836	54.89
		Washington	20,416	19,747	49.17
			21,103	20,583	49.38
23	2	Lowndes	22,568	8,719	27.87
	2	Noxubee	3,342	4,713	58.51
		Oktibbeha	14,072	5,003	26.23
			17,414	9,716	35.81
	1	Lowndes	22,568	8,719	27.87
		Noxubee	3,342	4,713	58.51
		Oktibbeha	14,072	5,003	26.23
			39,982	18,435	31.56
29	2	Sharkey	2,113	2,703	56.13
		Yazoo	8,416	7,656	47.64
			10,529	10,359	49.59

Districts	Number of Representatives	Counties	WVAP	BVAP	% BVAP
30	3	Claiborne	1,804	4,491	71.34
		Warren	17,145	10,574	38.15
			18,949	15,065	44.29
34	2	Amite	4,768	3,466	42.09
		Franklin	3,441	1,728	33.43
		Wilkinson	2,426	4,073	62.67
			10,635	9,267	46.56

(2) combined with white voting age majority counties to form white voting age majority floterial districts in which one of the subdistricts has a majority black voting age population—

28	1	Madison	7,413	9,680	56.63
	2	Rankin	20,604	7,547	26.81
			28,017	17,227	38.08

(3) combined with other black majority counties to form black majority districts and subdistricts—

11	2	Coahoma	9,509	13,235	58.19
	1	Quitman	4,370	4,398	50.16
		Tunica	2,148	4,167	65.99
			6,518	8,565	56.79
	1	Coahoma	9,509	13,235	58.19
		Quitman	4,370	4,398	50.16
		Tunica	2,148	4,167	65.99
			16,027	21,800	57.63
16	2	Holmes	5,344	8,219	60.60
		Humphreys	3,444	4,625	57.32
			8,788	12,844	59.38

(4) constituted as single county districts—

14	3	Bolivar	13,180	14,778	52.86
13	2	Sunflower	9,569	11,598	54.79
12	1	Tallahatchie	5,202	5,606	51.87

(5) combined with white majority counties to form black majority districts—

Districts	Number of Representatives	Counties	WVAP	BVAP	% BVAP
17	3	Carroll	3,260	2,460	43.01
		Leflore	11,956	12,830	51.76
			15,216	15,290	50.12
32	2	Copiah	8,696	6,671	43.41
		Jefferson	1,635	3,685	69.27
			10,331	10,356	50.06

The same pattern existed in the Senate:

(1) black majority counties were combined with white majority counties to form white majority districts—

Districts	Number of Senators	Counties	WVAP	BVAP	% BVAP
1	2	DeSoto	14,158	6,130	30.21
		Lafayette	13,391	3,445	20.46
		Marshall	5,975	7,578	55.91
			33,524	17,153	33.85
9	1	Quitman	4,370	4,398	50.16
		Tate	6,732	4,168	38.24
		Tunica	2,148	4,167	65.99
			13,250	12,733	49.01
14	1	Grenada	7,691	4,601	37.43
		Tallahatchie	5,202	5,606	51.87
			12,893	10,207	44.19
18	1	Noxubee	3,342	4,713	58.51
		Oktibbeha	14,072	5,003	26.23
			17,414	9,716	35.81
24	2	Claiborne	1,804	4,491	71.34
		Copiah	8,696	6,671	43.41
		Lincoln	12,381	4,309	25.82
		Simpson	9,132	3,403	27.15
			32,013	18,874	37.09
25	2	Adams	12,566	9,893	44.05
		Amite	4,768	3,466	42.09
		Franklin	3,441	1,728	33.43
		Jefferson	1,635	3,685	69.27
		Wilkinson	2,426	4,073	62.67
			24,836	22,845	47.91

(2) black majority counties were combined with other black majority counties to form black majority districts—

Districts	Number of Senators	Counties	WVAP	BVAP	% BVAP
11	2	Bolivar	13,180	14,778	52.86
		Sunflower	9,569	11,598	54.79
			22,749	26,376	53.69

(3) black majority counties were constituted as single county districts—

10	1	Coahoma	9,509	13,235	58.19
13	1	Leflore	11,956	12,830	51.76

(4) black majority counties were combined with white majority counties to form black majority districts—

12	2	Humphreys	3,444	4,625	57.32
		Washington	20,416	19,747	49.17
			23,860	24,372	50.53
15	2	Holmes	5,344	8,219	60.60
		Issaquena	687	836	54.89
		Madison	7,413	9,680	56.63
		Sharkey	2,113	2,703	56.13
		Yazoo	8,416	7,656	47.64
			23,973	29,094	54.83

(a) Black majority counties were combined with white majority counties to form 21 House and Senate districts and subdistricts. Only five of these districts and subdistricts had black majority voting age populations: House Districts 17 (50.12 percent), 32 (50.06 percent) and the subdistrict of Madison County in District 28 (56.63 percent) and Senate Districts 12 (50.53 percent) and 15 (54.83 percent). Three of these districts had only very slight black voting age population majorities.

Senate District 12 was composed of Humphreys (57.32 percent black VAP) and Washington (49.17 percent black VAP) counties. White majority Washington County is on the western border of Mississippi and is completely surrounded by black majority counties (Bolivar, Sunflower, Humphreys, Sharkey, and Issaquena). Since the population of Washington County is 70,581 it was too small to have two senators of its own under the requirements of one person-one vote and had to be combined with another county to form a Senate district. Washington County could have been combined with either Bolivar County or Sharkey County to form a district whose population approximates or is slightly less than a multiple of 42,633, the norm for a Senate district at that time. Those combinations would have produced districts with approximately the same black voting age population: with Bolivar (50.68 percent); with Sharkey (49.91 percent).

Senate District 15 is comprised of Holmes (60.60 percent black VAP), Issaquena (54.89 percent black VAP), Madison (56.63 percent black VAP), Sharkey (56.13 percent black VAP), and Yazoo (47.64 percent black VAP). White majority Yazoo County is bordered by the black majority counties with which it is combined, black majority Humphreys County, and white majority Warren and Hinds Counties. Warren and Hinds Counties are themselves Senate districts. Yazoo County, with a population of 27,304 is too small to constitute a Senate district. It could not have been combined with Warren to produce a

population which approximates a multiple of 42,633. If Yazoo County were combined with Hinds County, it would have placed Yazoo at a disadvantage since Hinds elected 5 senators at large; if 6 senators were elected at large from Hinds and Yazoo Counties combined, Yazoo might have had no representation. A combination of Yazoo and Humphreys Counties would have yielded a black voting age population majority district (50.87 percent). It does not appear that Yazoo County could have been combined with a contiguous county to create a white majority district.

House District 17 was composed of white majority Carroll County (43.01 percent black VAP) and black majority Leflore County (51.76 percent) to form a 50.12 percent black voting age population. Although Carroll County is bordered by white majority counties Grenada, Montgomery, and Attala, a combination with any of the three would not have produced a district with population approximating a multiple of 18,171, the norm for a House district at that time.

House District 32, which has a black voting age population of 50.06 percent, was comprised of white Copiah County (43.41 percent black) and black Jefferson County (69.27 percent).

House District 28 which has a 38.08 percent black voting age population is a floterial district electing four representatives. Madison County which has a 56.63 percent black voting age population is combined with Rankin County, which has a 26.81 percent black voting age population, to elect one repre-

sentative from the floater district. The subdistrict of Rankin County elects two representatives, and the subdistrict of Madison County elects one representative.

In sum, it appears that where black majority counties were combined with white majority counties, white majority districts were produced wherever possible. In the five instances where black majority districts and subdistricts were formed by such a combination, three of the five majorities were very slim and in two of the five it is unlikely that a white majority county could have been formed from contiguous counties.

(b) Black majority counties were combined with other black majority counties to form black majority districts and subdistricts in five instances: the three subdistricts of House District 11, House District 16 and Senate District 11.

House District 11, comprised of black majority Coahoma, Quitman, and Tunica Counties bordered on all black majority counties except Tate and DeSoto. Tate was a district itself and DeSoto was combined with a black majority county (Marshall) to form a white majority district. If Coahoma, Quitman, and Tunica were combined with Tate they would have formed a district with a black voting age population of 53.29 percent.

Holmes and Humphreys Counties are combined to form House District 16. The only white counties that border those two counties are Yazoo, Carroll, and Washington which were combined with black majority counties and Attala County, which was itself a district. If Holmes and Humphreys were combined with Attala they would have formed a district with a black voting age population of 50.04 percent.

Senate District 11 was composed of Bolivar and Sunflower Counties. The only white majority county bordering these counties was Washington which, as discussed, *supra*, if combined with Bolivar County would have produced a black majority district.

(c) There are five black majority counties which are constituted districts: House Districts 14, 13, and 12 and Senate Districts 10 and 13.

House Districts 14 (Bolivar County) and 13 (Sunflower County) could not be combined with a contiguous county to produce a white majority district. House District 12 (Tallahatchie County) could have been combined with white majority Grenada County to form a white majority district, the approximate size of a House district, but Grenada was combined with Montgomery County, producing the same result.

Senate District 10 (Coahoma County) could not have been combined with a white majority county since it does not share a border with one. The only white majority counties bordering Senate District 13 (Leflore County) are Carroll and Grenada Counties. If combined, these counties would have a population which did not approximate the norm for a Senate district.

In conclusion, black majority districts were formed from black majority counties only where there were

no feasible combinations of those counties with other counties which would produce white majority districts, continuing the pattern of discriminatory apportionment established in 1890.[18]

B. THE POLL TAX

The second means of disfranchising black voters adopted by the 1890 Convention was a poll tax. Miss. Const. Art. 12, § 243 (1890). The poll tax disfranchised blacks by providing a disincentive to the ex-

[18] The history of the abuse of apportionment to deny blacks access to the political system in Mississippi is not limited to state-wide apportionment plans. In the 1960's and 1970's officials of the State of Mississippi also denied blacks full participation in the electoral process by discriminatorily constituting municipal electoral bodies so as to dilute the strength of black votes. In 1962, the legislature of the State of Mississippi passed legislation prescribing majority vote, at-large elections for all municipal aldermanic posts. Miss. Code Ann. § 21-3-7 (1972). A three-judge court subsequently held that this legislation violated the Fourteenth and Fifteenth Amendment because it was "a purposeful device concerned and operated to further racial discrimination in the voting process," *Stewart* v. *Waller*, 404 F. Supp. 206, 215 (N.D. Miss.). Thus many aldermanic elections in the State of Mississippi between 1962 and 1975 were conducted in a racially discriminatory manner. In municipalities in which blacks did not have at least a 2:1 population majority, the number of black aldermen elected never exceeded 1 percent of the total number of aldermen elected in those municipalities. *Id.* at 215.

Similarly, in *Moore* v. *LeFlore County Board of Election Commissioners*, 361 F. Supp. 603 (N.D. Miss.), affirmed, 502 F.2d 621 (C.A. 5), a reapportionment plan for the Leflore County Board of Supervisors was held to be unconstitutional because its "purpose and effect * * * was to divide the black population and dilute the black vote in the county." *Id.* at 607.

ercise of the franchise by poor blacks. Kirwan, *supra*, at 69-74. In *Ratliff* v. *Beale*, *supra*, 74 Miss. at 268, 20 So. at 869, the Mississippi Supreme Court analyzed the purpose and effect of the poll tax enacted by the 1890 Convention. It ruled that the poll tax was "primarily intended by the framers of the constitution as a clog upon the franchise, and, secondarily and incidentally only, as a means of revenue." (*Ibid.*) In later years, the poll tax was utilized as a means of disfranchising black voters because the requirement that the poll tax be paid for two consecutive years erected a procedural hurdle subject to discriminatory application by local officials.[19]

C. THE LITERACY TEST

The literacy or understanding test enacted by the 1890 Convention in Miss. Const. Art. 12, § 244

[19] See *Voting in Mississippi, supra*, at 19. The decisions of the United States Court of Appeals for the Fifth Circuit in *United States* v. *Dogan*, 314 F.2d 767, and *United States* v. *Holmes County, Mississippi*, 385 F.2d 145, demonstrate the manner in which registrars in Tallahatchie County and Holmes County utilized the poll tax to disfranchise black voters by refusing to accept their payments or by making it procedurally more difficult for black voters to pay their poll tax. This practice was carried on in many counties in Mississippi even up until the mid 1960's, *Voting in Mississippi, supra*, at 19, when the poll tax was declared unconstitutional in *United States* v. *State of Mississippi*, 11 Race Rel. L. Rep. 837 (S.D. Miss.). The repeal of the poll tax was approved by the electorate of Mississippi on November 4, 1975, and the poll tax was deleted from the Constitution by proclamation of the Secretary of State on December 8, 1975. Miss. Const. Art. 12, § 243, repealed (Supp. 1976).

(1890), required an applicant for registration either to read a section of the constitution or to understand the same when read to him or to give a reasonable interpretation thereof. Since illiterate blacks greatly exceeded illiterate whites, *United States* v. *State of Mississippi*, 229 F. Supp. 925, 990-993 (S.D. Miss.) (Brown, J., dissenting), and since there was a general understanding that the test would be administered so as to disfranchise only blacks, the understanding test was viewed as a loophole to qualify illiterate whites who would otherwise be disfranchised with the illiterate blacks. Kirwan, *supra*, at 70; *Voting in Mississippi*, *supra*, at 4-5); *United States* v. *State of Mississippi*, *supra*, 229 F. Supp. at 988 (Brown, J., dissenting).

The literacy test has in fact been utilized in Mississippi to disfranchise black voters. The Fifth Circuit has ruled many times that registrars in Mississippi were utilizing literacy tests to discriminate against black voters. In *Peay* v. *Cox*, 190 F. 2d 123 (C.A. 5), certiorari denied, 342 U.S. 896, the practice of the registrar of Forrest County who required that blacks be able to read and to understand sections of the Mississippi Constitution, while not requiring either for white applicants, was questioned by the Fifth Circuit. A bill was then enacted which codified the Forrest County registrar's practice of requiring an ability both to read and to interpret the Constitution. Miss. Laws, 1954, Ch. 427. This bill exempted all persons registered before January 1, 1954, about one-twentieth of the eligible blacks and about two-thirds of the adult white population. *Voting in*

Mississippi, *supra*, at 6. The proponents of this bill indicated that its purpose was " 'solely to limit Negro registration.' " *Ibid.* Subsequent events showed that the "read and understand" requirement achieved its proponents' purpose.[20] Registrars illegally disfranchised blacks by (1) discriminating in the choice of constitutional sections by requiring blacks to read and interpret more difficult sections of the Constitution; *United States* v. *Lynd*, 349 F. 2d 790, 792 n. 5 (C.A. 5); *United States* v. *Lynd*, 301 F. 2d 818, 822 n. 1 (C.A. 5), certiorari denied, 371 U.S. 893; *United States* v. *Duke*, 332 F. 2d 759 (C.A. 5); *Voting in Mississippi*, *supra*, at 14; (2) discriminating in determining whether black applicants had properly interpreted the sections assigned by the use of a double standard less favorable to blacks; *United States* v. *Lynd*, 349 F. 2d 790, 792 n. 3 (C.A. 5); *Voting in Mississippi*, *supra*, at 14; and by (3) discriminating in assisting whites to register but not assisting blacks. *United States* v. *Lynd*, 301 F. 2d 818, 821 (C.A. 5), certiorari denied, 371 U.S. 893; *United States* v. *McClellan*, 248 F. Supp. 62, 66 (S.D. Miss.); *United States* v. *Duke*, 332 F. 2d 759 (C.A. 5); *Voting in Mississippi*, *supra*, at 14.

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[20] Moreover, the discriminatory application of the "understanding test" was enhanced by the fact that blacks in the State of Mississippi up until very recent times were afforded an education far inferior to that afforded whites. *Voting in Mississippi*, *supra*, at 41-47; *United States* v. *State of Mississippi*, *supra*, 229 F. Supp. at 990-994 (Brown, J., dissenting). See *Gaston County* v. *United States*, 395 U.S. 285, 296-297.

During the period between 1957 and 1965, federal courts considering the application of registration procedures in the State of Mississippi found that blacks were being discriminated against and illegally disfranchised through the abuse of the "read and understand" test. *South Carolina* v. *Katzenbach*, *supra*, 383 U.S. at 312; Hearings on S. 1564 before the Senate Committee on the Judiciary, 89th Cong., 1st Sess., Part 2, pp. 1485-1489 (1965). See also *United States* v. *Duke*, *supra* (Panola County); *United States* v. *Ramsey*, 331 F. 2d 824 (C.A. 5) (Clarke County); *United States* v. *State of Mississippi*, 339 F. 2d 679 (C.A. 5) (Walthall County); *United States* v. *Lynd*, 349 F. 2d 790 (C.A. 5) (Forrest County); *United States* v. *McClellan*, *supra* (Holmes County).[21]

[21] Nor can it be said that the State of Mississippi merely passively observed county registrars discriminate against blacks. On April 10, 1962, the United States Court of Appeals for the Fifth Circuit issued a temporary injunction ordering the registrar of Forrest County, Mississippi, to assist black applicants as he had previously assisted whites, to ignore insignificant errors and omissions on blacks' forms, and to stop requiring that each unsuccessful black applicant wait six months before reapplying. *United States* v. *Lynd*, 301 F.2d 818 (C.A. 5), certiorari denied, 371 U.S. 893. Within seven days legislation was introduced in the Mississippi legislature which among other things: (1) strengthened the law requiring that each applicant execute an error-free form without any assistance; (2) established a requirement that the names of applicants be published in a local newspaper once a week for two weeks as an invitation to voters to challenge the qualification of applicants; and (3) directed the registrar not to advise applicants of the reason for their rejection Miss. Laws, 1962, Chs. 569-573; *Voting in Mississippi*, *supra*, at 9. In 1965, after the passage of the Voting Rights Act of 1965, Mississippi changed its registration requirements and now only requires an applicant to be able to read and write. Miss. Laws, 1965, Ex. Sess., Ch. 40.

D. THE WHITE PRIMARY

In 1902 the State of Mississippi provided that party nomination for state and local offices should be made pursuant to a primary election and that the executive committee of any party was authorized to exclude any person from its primary. Miss. Laws, 1902, Ch. 66. From 1902 until 1944 Democratic Party primaries remained closed to blacks pursuant to resolution of the Democratic Committee. *Voting in Mississippi*, *supra*, at 6-7. Since during that period of time nomination by the Democratic Party in Mississippi virtually guaranteed election, in all statewide and county elections, and in most local elections, the effect of exclusion from the primary was total disfranchisement. *Id.* at 7.

In 1944 this Court held that "white primaries" were unconstitutional in *Smith* v. *Allwright*, 321 U.S. 649. Until 1947 this decision had no effect in Mississippi; no appreciable increase in black participation in the primary process occurred. *Voting in Mississippi*, *supra*, at 7; *United States* v. *State of Mississippi*, *supra*, 229 F. Supp. at 989 (Brown, J., dissenting).[22] In 1948 the Mississippi legislature provided that no one could participate in any primary unless he had been "in accord with the party holding such primary within the two preceding years"; only such persons could not be "excluded from such pri-

[22] In the primary of 1946, the first after *Smith* v. *Allwright*, *supra*, blacks attempting to vote were turned away by election officials, apparently acting on their own initiative. *Voting in Mississippi*, *supra*, at 7.

mary by any regulation of the state executive committee of the party holding such primary." Miss. Laws, 1948, Ch. 309; Miss. Code Ann., § 3129 (Recompiled 1956). Moreover, each voter's qualifications and "accord" with the principle of the party could be challenged at the polls. *Ibid.* The Mississippi Democratic Party responded by adopting principles endorsing racial segregation unacceptable to the great majority of blacks, *United Sates* v. *State of Mississippi*, *supra*, 229 F. Supp. at 989 (Brown, J., dissenting),[23] such as the following resolution adopted by the Democratic State Convention on July 28, 1964 (*Voting in Mississippi*, *supra*, at 8):

> We believe in separation of the races in all phases of our society. It is our belief that the separation of the races is necessary for the peace and tranquillity of all the people of Mississippi and the continuing good relationship which has existed over the years.

Such action continued to deny blacks participation in the primary process. *United States* v. *State of Mississippi*, *supra*, 229 F. Supp. at 989 (Brown, J., dissenting). No blacks were nominated for state offices in Democratic Party Primaries between 1900 and 1975, R. Doc. 154, Hearing of May 7, 1975, Tr. at 46.[24]

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[23] These principles were endorsed by the state in a 1952 Resolution, Miss. Laws, 1952, Ch. 464. *United States* v. *State of Mississippi*, *supra*, 229 F. Supp. at 989 (Brown, J., dissenting).

[24] In August 1975 several black candidates were nominated for the legislature in Democratic Party Primaries (R. Doc. 209, submission of the United States pursuant to October 24, 1975, Court Order filed January 26, 1976).

II. THE EFFECT OF THE CIVIL RIGHTS ACTS

Congress responded to evidence of black disfranchisement in Mississippi and in other states by passing the Civil Rights Acts of 1957 (71 Stat. 634), 1960 (74 Stat. 86) and 1964 (78 Stat. 241). These acts were designed to aid in guaranteeing all citizens access to the electoral process by facilitating litigation to enforce voting rights by private parties and by the Attorney General. *South Carolina* v. *Katzenbach*, *supra*, 383 U.S. at 313.[25]

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[25] The Civil Rights Act of 1957 authorized the Attorney General to bring suits to prevent denial of the right to vote based on race, color, or national origin. 42 U.S.C. (1958 ed.) 1971(c). The Civil Rights Act of 1960 required that states maintain and produce registration and voting records and authorized the appointment of voting referees where a pattern or practice of discrimination was found. 42 U.S.C. (1958 ed. Supp. V) 1971(e), 1974. While the Civil Rights Act of 1960 was being debated, the Mississippi legislature enacted Miss. Code Ann., § 3209.6 (Supp. 1962), a law specifically authorizing the destruction of registration records. *Voting in Mississippi*, *supra*, at 8. The Civil Rights Act of 1964 limited the power of state registrars to utilize literacy tests to disfranchise black voters. 42 U.S.C. (1970 ed.) 1971(a)(2)(A), (B), and (C) and (c). In 1965 the State of Mississippi repealed Miss. Code Ann., § 3273 (1942), which provided for assistance to illiterate voters. This action was subsequently held to be inconsistent with the congressional intent in passing the Voting Rights Act of 1965, 42 U.S.C. 1973, and the State was ordered to provide assistance for illiterate voters. *United States* v. *State of Mississippi*, 256 F. Supp. 344, 348-349 (S.D. Miss.).

The Civil Rights Acts of 1957, 1960 and 1964 did "little to cure the problem of voting discrimination." *South Carolina* v. *Katzenbach*, *supra*, 383 U.S. at 313. Registration of voting age blacks in Mississippi increased only from 4.4 percent to 6.4 percent between 1954 and 1964. *Ibid.* Because of the history of discrimination in Mississippi and in other states, and because of the relative ineffectiveness of the Civil Rights Acts of 1957, 1960 and 1964, Congress passed the Voting Rights Act of 1965, 79 Stat. 437, as amended, 42 U.S.C. 1971, 1973-1973p. See *South Carolina* v. *Katzenbach*, *supra*.

The Voting Rights Act of 1965 prohibited many of the practices which Mississippi had historically utilized to disfranchise black voters. However, the Voting Rights Act is not self-enforcing and vestiges of the history of racial discrimination in the electoral process still remain. Since 1965, the United States has enforced the provisions of the Voting Rights Act in Mississippi by court action on eight occasions, five by litigated order and three by consent decree.[26] Be-

[26] *United States* v. *State of Mississippi*, 11 Race Rel. L. Rep. 837 (S.D. Miss.). Poll tax held unconstitutional.

United States v. *State of Mississippi*, 256 F. Supp. 344 (S.D. Miss.). Order to recognize federal voter lists.

United States v. *Shannon* (Coahoma County) (N.D. Miss.) Civ. A. No. D.C. 69-28-K, filed May 17, 1969. Names of qualified black candidates ordered on ballot.

[Footnote continued on page 37a]

tween 1965 and 1975 the Attorney General designated more counties in Mississippi as examiner counties, pursuant to 42 U.S.C. 1973d, than in any other state covered by the Voting Rights Act. More than

[26] [Continued]

United States v. *Board of Election Commissioners of Leake County* (S.D. Miss.), Civ. A. No. J-4771, filed October 28, 1970. T.R.O. granted enjoining change to at-large election system without federal review. Consent decree subsequently entered.

United States v. *Humphreys County Board of Election Commissioners* (N.D. Miss.), Civ. A. No. GC-71-141-S, filed December 18, 1971. Consent decree providing that ballots would be counted for any office marked clearly.

United States v. *Marshall County* (N.D. Miss.), Civ. A. No. WC-73-8-K, filed November 1, 1971. Consent decree reassigning misassigned voters and creating election districts.

Stewart v. *Waller*, 404 F. Supp. 206 (N.D. Miss.). Mississippi statute requiring at-large aldermanic elections unconstitutional.

United States v. *Kemper County, Miss.* (S.D. Miss.), Civ. A. No. E-74-65(C), filed November 1, 1974. New election ordered where an election was held without federal review of a change to an at-large election system.

See Hearings on H.R. 939, H.R. 2148, H.R. 3247, and H.R. 3501 before a Subcommittee of the House Committee on the Judiciary, 94th Cong., 1st Sess., Part 1, pp. 198-201 (1975).

Private parties have also obtained relief against violations of the Voting Rights Act by officials in Mississippi. See, *e.g.*, *Allen* v. *State Board of Electors*, 393 U.S. 544; *Perkins* v. *Matthews*, 400 U.S. 379; *Mississippi Freedom Democratic Party* v. *Johnson*, 299 F. Supp. 93 (S.D. Miss.); *Evers* v. *State Board of Elections Commissioners*, 327 F. Supp. 640 (S.D. Miss.), appeal dismissed, 405 U.S. 1001.

half of the 73 counties so designated were located in Mississippi.[27] Moreover, the Attorney General sent more observers to more counties for more electoral contests in Mississippi, pursuant to 42 U.S.C. 1973f, than in any other state covered by the Act, sending a total of 3,766 observers to thirty-one different electoral contests.[28]

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[27] Hearings on H.R. 939, H.R. 2148, H.R. 3247, and H.R. 3501 *supra*, at 216-217. In 37 of the 38 designated examiner counties in Mississippi, the Attorney General certified that in his judgment the appointment of examiners was necessary to enforce the guarantees of the Fifteenth Amendment (I A 203-205).

[28] Hearings on H.R. 939, H.R. 2148, H.R. 3247, and H.R. 3501 *supra*, at 221. Observers were sent following the Attorney General's determination under 42 U.S.C. 1973f that the presence of observers was necessary to insure the protection of Fifteenth Amendment rights (I A. 211).

APPENDIX B

SUMMARY OF SOURCES AND METHODOLOGY FOR STATISTICS AND MAPS

I. *Summary of Sources and Methodology For Statistics*

The following are the sources and methodology used to derive the statistics cited in this brief's analysis of the district court's reapportionment plan and the alternative plans.

A. *Population*

House and Senate districts are composed of counties, supervisor districts and voting precincts. Populations by race for entire counties are obtained from published census data.[1] Calculations must be made to determine populations for portions of counties, since population statistics are not available for voting precincts or for supervisor districts altered after the 1970 census. The charts which accompany the maps in Appendix C indicate where population statistics are based on calculations and explain how the calculations were made.

Population estimates for House and Senate districts are computed by comparing current county precinct lines[2] with county and city maps showing census

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[1] U.S. Bureau of the Census, Census of Population: 1970, GENERAL POPULATION CHARACTERISTICS, Final Report PC(1)-B26 Mississippi, Table 34, "Race by Sex, for Counties: 1970."

[2] Maps or descriptions of current voting precincts were obtained from county officials in each county.

enumeration districts.[5] Census computer printouts provide county enumeration district populations by race.[6] Where an entire enumeration district lay within the boundaries of the House or Senate district, the population by race of the enumeration district was taken from the computer printout. Where House or Senate district lines split an enumeration district, an estimate of the portion of the enumeration district lying within the House or Senate district was made. In the City of Greenville (Washington County), some segments of enumeration districts were weighted to reflect population density. For Jackson, Mississippi, census block statistics[7] were used to calculate populations of split enumeration districts. The percent black population of a district represents the district's total black population divided by the district's total population, rounded to the nearest tenth of a percent.

B. *Voting Age Population (VAP)*

Voting age populations (18 years or older) by race for entire counties are obtained from published census data.[8] To find VAP's by race for portions

[5] Maps showing current enumeration districts were obtained from the U.S. Bureau of the Census.

[6] Count 1, File A, 1970 Census—Mississippi Counties, U.S. Bureau of the Census.

[7] U.S. Bureau of the Census, Census of Housing: 1970, BLOCK STATISTICS, Final Report HC(3)-133 Jackson, Mississippi Urbanized Area.

[8] U.S. Bureau of the Census, Census of Population: 1970, GENERAL POPULATION CHARACTERISTICS, Final Report PC(1)-B26 Mississippi, Table 35, "Age by Race and Sex, for Counties: 1970."

of counties, county factors are derived from published census data [9] by the following formula:

$$\text{Black Factor} = \frac{\text{County Black VAP}}{\text{County Black Population}}$$

$$\text{White Factor} = \frac{\text{County White and Other VAP}}{\text{County White and Other Population}}$$

and are applied to population figures as follows:

BVAP = Black Population *X* Black Factor

WVAP = White and Other Population *X* White Factor

To derive a percent black VAP for a House or Senate district, the sum of the BVAPs for all counties and/or portions of counties is divided by the total of all VAPs in the district.

$$\% \text{ BVAP} = \frac{\text{BVAP}}{\text{TVAP}}$$

Percents are rounded to the nearest tenth of a percent.

C. *Deviation*

Deviation indicates the percent by which a district's population varies from an ideal population calculated as follows:

$$\text{Ideal Population} = \frac{\text{Population of Mississippi}^{10}}{\text{Number of Districts}}$$

[9] *Ibid.*

[10] U.S. Bureau of the Census, Census of Population: 1970, GENERAL POPULATION CHARACTERISTICS, Final Re-

Using this formula the ideal population for a House district is:

$$18{,}171 = \frac{2{,}216{,}912}{122}$$

and for a Senate district the ideal is:

$$42{,}633 = \frac{2{,}216{,}912}{52}$$

To find the percent deviation:

$$\%\ \text{Deviation} = \frac{\text{District Population—Ideal Population}}{\text{Ideal Population}}$$

Statistics presented in the district court have been revised in order to correct computation errors. However, these changes do not affect the basis for the United States' objections to the district court's House and Senate plans.

II. *Summary of Sources and Methodology For Maps in Appendix C*

A. *Base Maps*

1. All county and city base maps, with the exception of Hinds County, are official 1970 U.S. Census Bureau—Enumeration District Maps, supplied by the U.S. Department of Commerce, Bureau of the Census. [Note: The district court stated that it would allow reference to any part of the U.S. Census of 1970 (R. Doc. 154, p. 48, Transcript of May 7, 1975 hearing).]

port PC(1)-B26 Mississippi, Table 16, "Summary of General Characteristics: 1970."

2. The Hinds County base maps (App. C-1) are copies of exhibits contained in the record in *Kirksey, et al.* v. *Board of Supervisors of Hinds County, et al.*, of which the district court took judicial notice. (See Brief p. 76 n. 65 *supra.*)

3. The Mississippi State base map, used to illustrate Senate districts for Claiborne and Jefferson Counties (App. C-12), is a reproduction of an official U.S. Census Bureau map as published in "Final Report PC(1) B-26 Mississippi, GENERAL POPULATION CHARACTERISTICS, U.S. Bureau of the Census, Census of Population: 1970."

B. *Majority Black Population Census Enumeration Districts*

Shading indicates census enumeration districts which contained a majority black (50.0-100%) population as of 1970.[9] The statistics relied upon were derived from a census printout (Count 1, File A, 1970 Census—Mississippi Counties, U.S. Bureau of the Census).

C. *District Lines*

Since both the district court's final plan and alternative plans are described by reference to supervisor districts ("beats") and/or voting precincts[10],

[9] Applying county factors, described above, 146 of the 154 majority black enumeration districts have black voting age population majorities.

[10] Although the district court did not take judicial notice of precinct lines, it is implicit in its use of such precincts in

the boundaries of the various districts were drawn by transposing onto the base maps current beat and precinct lines obtained from county officials."

The Court's final Senate plan for Hinds County follows the same boundaries as the five supervisor districts approved in *Kirksey* v. *Board of Supervisors of Hinds Co., et al.* (III A. 235). The map of the district court's plan is a reproduction of a map in the *Kirksey* record (Ex. P-44) which delineates current supervisor districts and highlights majority black population census enumeration districts in the City of Jackson. The alternative plan is a reproduction of a similar map from the *Kirksey* record, on which were drawn the district lines, by the method described in C, *supra*.

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drawing districts. Moreover, these lines are required by Mississippi law to be officially recorded, Miss. Code §§ 23-5-13, and are judicially noticeable at any stage of the proceedings. Rule 201, Federal Rules of Evidence.

[11] In the case of *Warren County*, precinct maps were extracted from the court record in *U.S.* v. *Board of Supervisors of Warren County* (III A. 257).

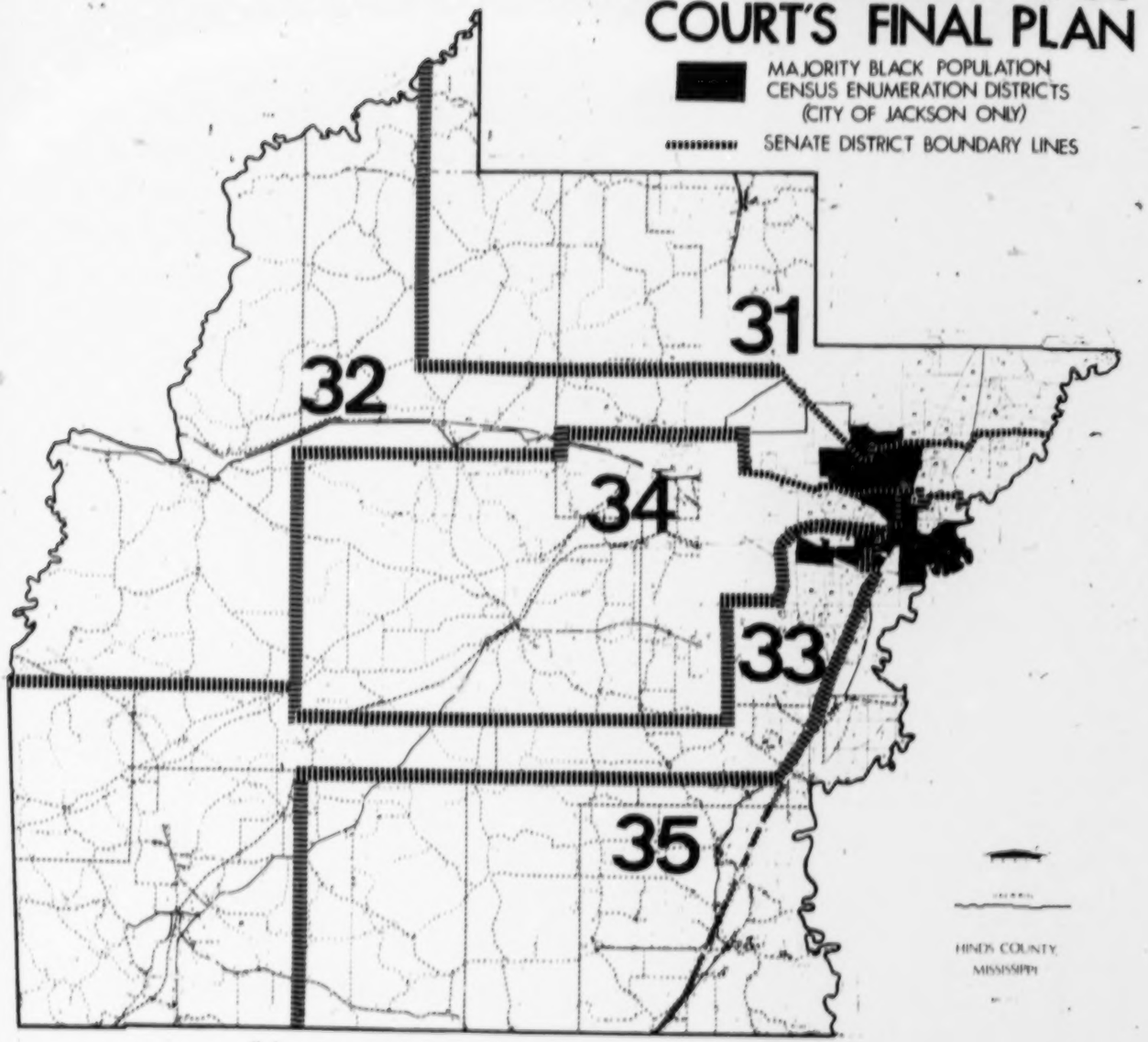
APPENDIX C

Maps and Statistical Charts Comparing Certain Districts in the Court's Final Reapportionment Plan and Alternative Plans

HINDS COUNTY SENATE DISTRICTS 31-35 COURT'S FINAL PLAN

MAJORITY BLACK POPULATION CENSUS ENUMERATION DISTRICTS (CITY OF JACKSON ONLY)

SENATE DISTRICT BOUNDARY LINES

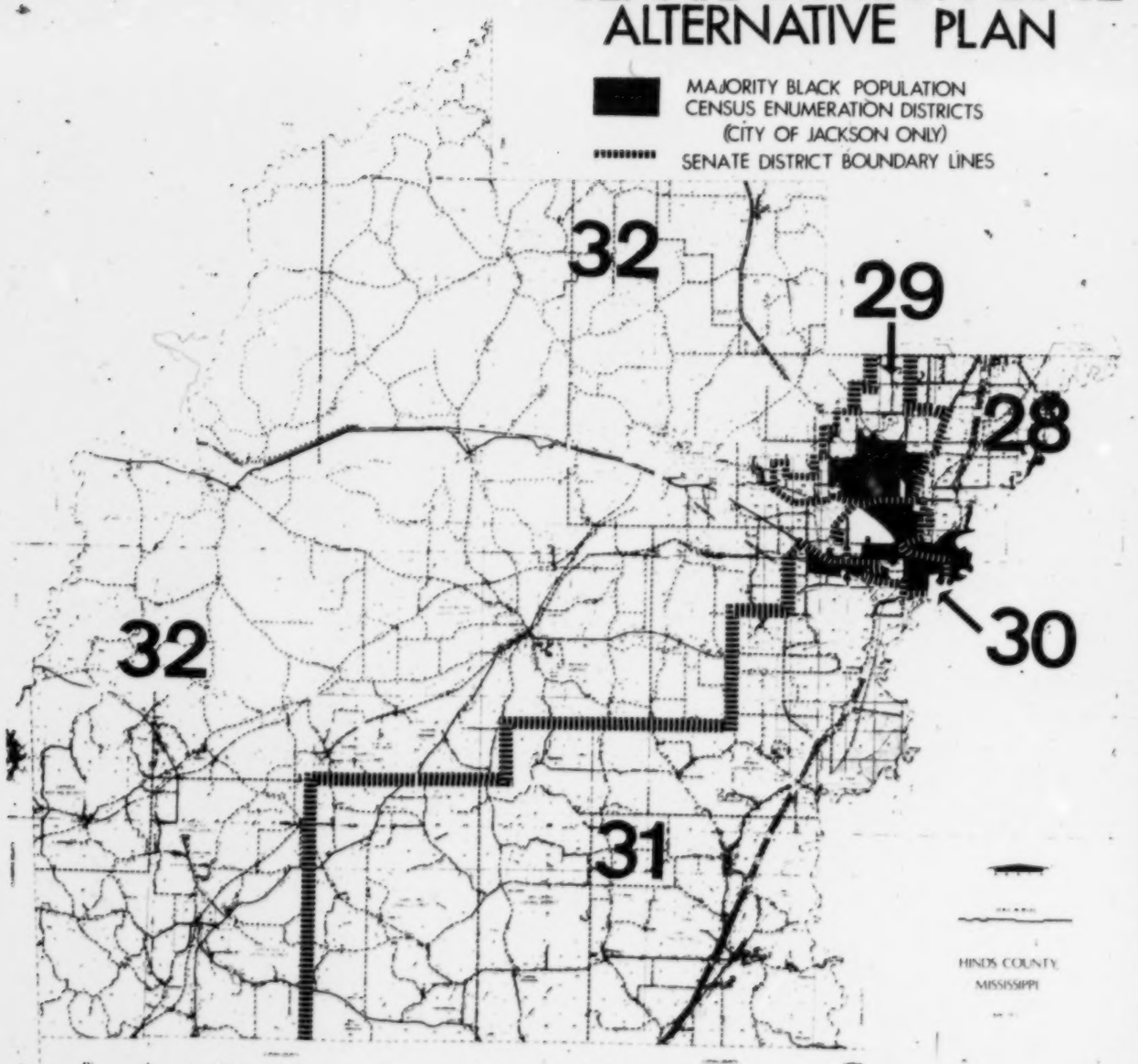


HINDS COUNTY MISSISSIPPI

HINDS COUNTY SENATE DISTRICTS 28-32 ALTERNATIVE PLAN

MAJORITY BLACK POPULATION CENSUS ENUMERATION DISTRICTS (CITY OF JACKSON ONLY)

SENATE DISTRICT BOUNDARY LINES



HINDS COUNTY MISSISSIPPI

APPENDIX C-2

Hinds County

COURT'S FINAL PLAN *

Senate District	Description
31	Hinds County: Beat (Supervisor District) 1
32	Hinds County: Beat (Supervisor District) 2
33	Hinds County: Beat (Supervisor District) 3
34	Hinds County: Beat (Supervisor District) 4
35	Hinds County: Beat (Supervisor District) 5

* Fnial Judgment of November 18, 1976 (III A. 235).

Hinds County

ALTERNATIVE PLAN *

Senate District	Description
28	Hinds County: the Precincts of Twin Pines, Liberty Grove, and Precincts Nos. 1, 5, 8, 9, 14-17, 32-38, 42-45, and 79-82
29	Hinds County: Precincts Nos. 11-13, 21-31, 39-41, and 83
30	Hinds County: Precincts Nos. 2, 4, 6, 10, 18-20, 47, 50-58, 63, and 64
31	Hinds County: Alternative I—Precincts 49, 66-77, Byram, Old Byram, Red Hill, Forrest Hill, Woodville Heights, Hickory, Fairfax, Terry, Dry Grove, Chapel Hill, and Briarcliff
32	Hinds County: Alternative I—the Precincts of Tinnin, Pocahontas, Cynthia, Presidential Hills, North Clinton, Clinton Nos. 2-4, Van Winkle No. 1, Midway, Flag Chapel, Brownsville, Bolton, Edwards, Cayuga, Utica Nos. 1 and 2, Learned, Raymond Nos. 1 and 2, Clinton No. 1, Van Winkle No. 2, and Precincts Nos. 59-62

* Senate Restricted Fractionalization Plan: Ex. C-1 to Alternative Plans Submitted by the United States Pursuant to Order of July 11, 1975, filed October 31, 1975 (III A. 50-51).

Hinds County

COURT PLAN *

Senate District	Total Population	Nonwhite Population	% Nonwhite	Black VAP	% Black VAP	% Deviation
31	42,948	12,695	29.5	6,957	25.3	+0.7
32	43,061	22,984	53.4	12,595	48.0	+1.0
33	43,199	11,962	27.7	6,555	23.5	+1.3
34	43,010	13,750	32.0	7,535	27.5	+0.9
35	42,755	23,066	54.0	12,640	48.6	+0.3

ALTERNATIVE PLAN **

Senate District	Total Population	Black Population	% Black	Black VAP	% Black VAP	% Deviation
28	42,042	2,030	4.8	1,113	3.9	—1.4
29	40,946	26,634	65.0	14,598	60.0	—4.0
30	46,094	30,555	66.3	16,747	61.3	+8.1
31	41,635	6,236	15.0	3,418	12.4	—2.3
32	44,256	18,605	42.0	10,197	36.9	+3.8

* % deviation obtained from the Order of August 24, 1976 (III A. 105). All other court statistics were provided in the district court's opinion in *Kirksey* v. *Board of Supervisors of Hinds Co., Kirksey* App., pp. 534, 543, 545.

** Senate Restricted Fractionalization Plan, Ex. C-1 to United States' Alternative Plans filed October 31, 1975 (III A. 50-51). Statistics calculated by the United States from estimates based on census enumeration district data.



WARREN COUNTY
HOUSE DISTRICTS 53-55
COURT'S FINAL PLAN

MAJORITY BLACK POPULATION CENSUS ENUMERATION DISTRICTS

HOUSE DISTRICT BOUNDARY LINES

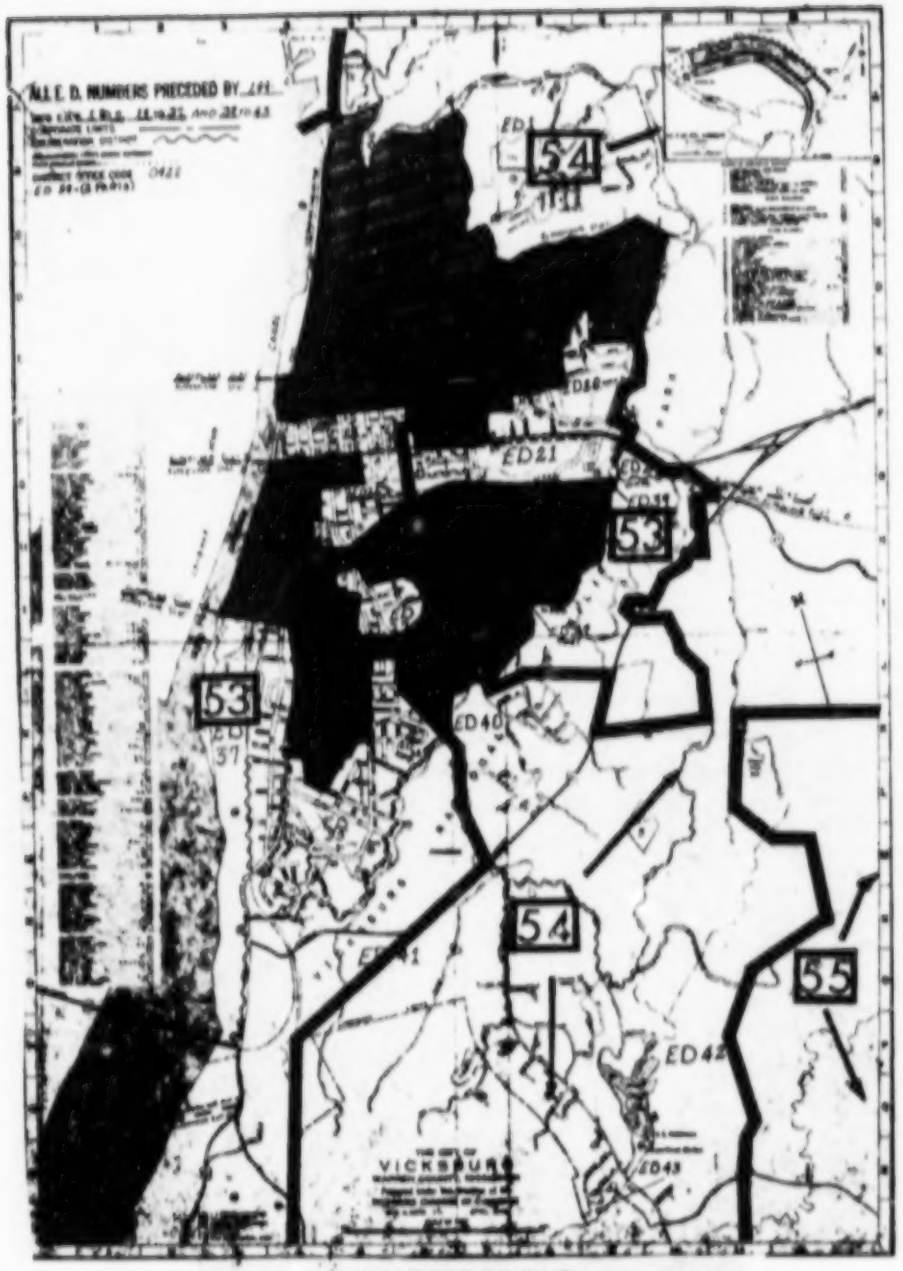


WARREN COUNTY
HOUSE DISTRICTS 53-55
ALTERNATIVE PLAN

MAJORITY BLACK POPULATION CENSUS ENUMERATION DISTRICTS

HOUSE DISTRICT BOUNDARY LINES

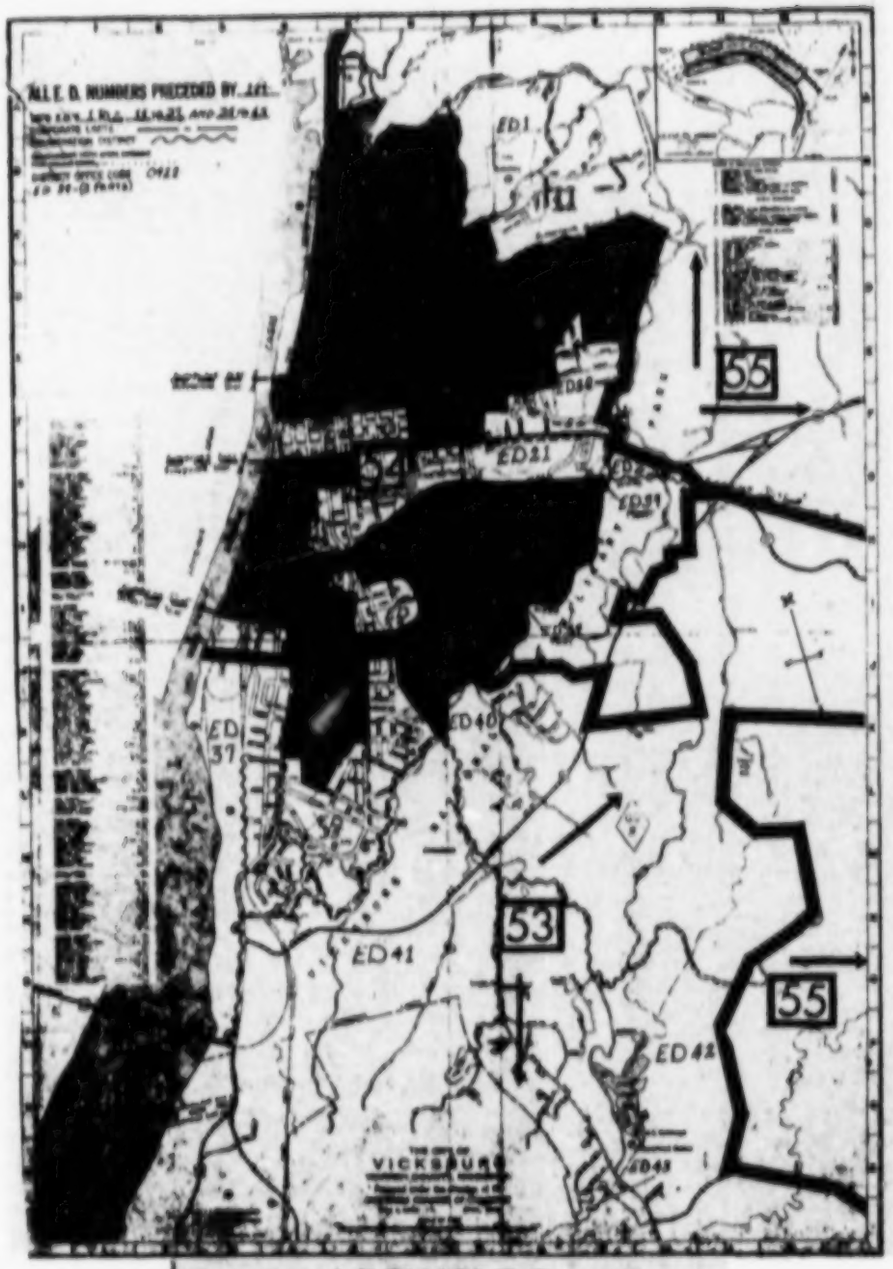
APPENDIX C-4



VICKSBURG
HOUSE DISTRICTS 53-55
COURT'S FINAL PLAN

MAJORITY BLACK POPULATION CENSUS ENUMERATION DISTRICTS

HOUSE DISTRICT BOUNDARY LINES



VICKSBURG
HOUSE DISTRICTS 53-55
ALTERNATIVE PLAN

MAJORITY BLACK POPULATION CENSUS ENUMERATION DISTRICTS

HOUSE DISTRICT BOUNDARY LINES

APPENDIX C-5

Warren County

COURT'S FINAL PLAN *

House District	Description
53	Warren County: the Precincts of Redbone, Yokena, Jett, Fire Station No. 7, American Legion (Blackburn), and St. Aloysius
54	Warren County: the Precincts of Culkin, Beechwood, Jonestown, Kings, Cedar Grove, Auditorium, and Central Fire Station
55	Warren County: the Precincts of Oak Ridge, Bovina, Redwood, Walters, Brunswick, Tingle, and Goodrum Yazoo County: the Precincts of Dover, East Bentonia, West Bentonia, Mechanicsburg, Phoenix, Satartia, Deasonville, Fugates, Valley, Enola, Fairview, and Holly Bluff

* Order of December 21, 1976 (III A. 281-282).

Warren County *

ALTERNATIVE PLAN **

House District	Description
53	Warren County: the Precincts of Yokena, Jett, Jonestown, Fire Station No. 7, Redbone, Goodrum, and Beechwood
54	Warren County: the Precincts of American Legion, Central Fire Station, St. Aloysius, Auditorium, Walters, and Brunswick
55	Warren County: the Precincts of Tingle, Culkin, Bovina, Kings, Cedar Grove, Oak Ridge, and Redwood; Yazoo County: the Precincts of Satartia, Phoenix, Mechanicsburg, East Bentonia, West Bentonia, Dover, Benton, Deasonville, and Fugates

* Redistricting of districts 53-55 would also require redistricting of districts 47 and 56 (Sharkey, Humphreys and part of Yazoo Counties). Alternative districts 47 and 56 are described in Ex. B-5 to Plaintiff's Supplement to Motion to Alter or Amend Judgment, filed October 8, 1976 (III A. 196).

** Plaintiffs' Suggested Alternative House Districts, Ex. B-5 to Plaintiffs' Supplement to Motion to Alter or Amend Judgment, filed October 8, 1976 (III A. 196).

Warren County

	COURT PLAN *				UNITED STATES' ANALYSIS OF COURT PLAN **					
House District	Total Population	Black Population	% Black	% Deviation	Total Population	Black Population	% Black	Black VAP	% Black VAP	% Deviation
53	16,968	7,207	42.5	—6.6	16,963	7,207	42.5	4,152	39.4	—6.6
54	17,559	7,348	41.8	—3.4	17,559	7,348	41.8	4,233	39.2	—3.4
55	17,383	7,599	43.7	—4.3	17,786	7,897	44.4	4,340	40.3	—2.1

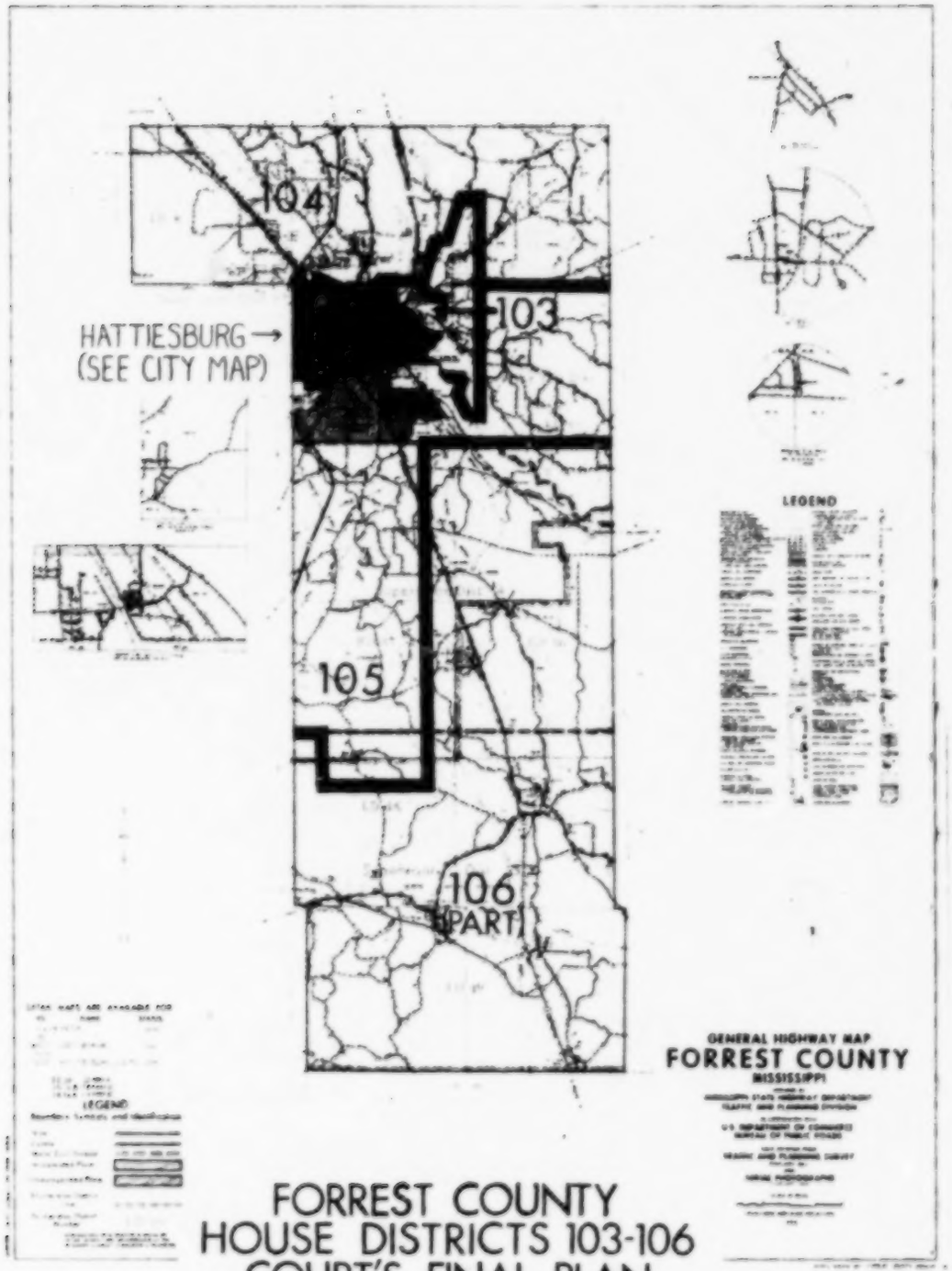
	ALTERNATIVE PLAN ***					
House District	Total Population	Black Population	% Black	Black VAP	% Black VAP	% Deviation
53	16,788	4,706	28.0	2,711	25.8	—7.6
54	17,643	10,459	59.3	6,025	56.6	—2.9
55	16,965	6,691	39.4	3,676	29.0	—6.4

* Statistics provided by the Court in its Order Amending Judgment of December 21, 1976 (III A, 281-282).

** Statistics calculated by the United States from published census data for Sharkey and Humphreys Counties; Court Order of December 21, 1976, for Sharkey County, Silver City Precinct; Plaintiffs' estimates derived from census enumeration districts for Yazoo County; and Plaintiffs' estimates for Warren County which were accepted by the Special Master on December 8, 1976 (III A. 273-274).

*** Statistics calculated by the United States from published census data for Sharkey and Humphreys Counties; Plaintiffs' estimates derived from census enumeration districts for Yazoo County; and Plaintiffs' estimates for Warren County which were accepted by the Special Master in his report of December 8, 1976 (III A. 273-274).

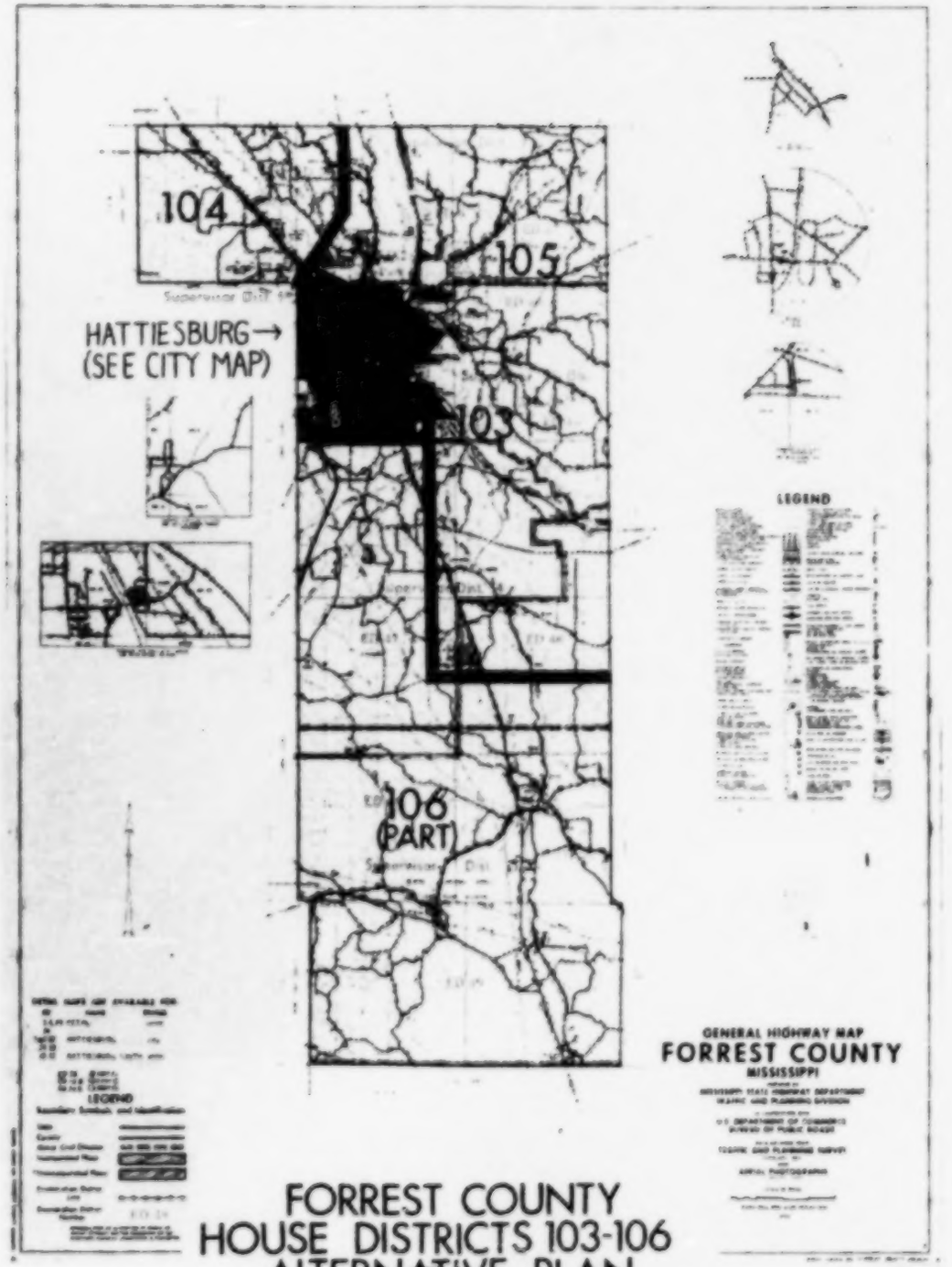
APPENDIX C-6



FORREST COUNTY
HOUSE DISTRICTS 103-106
COURT'S FINAL PLAN

MAJORITY BLACK POPULATION CENSUS ENUMERATION DISTRICTS

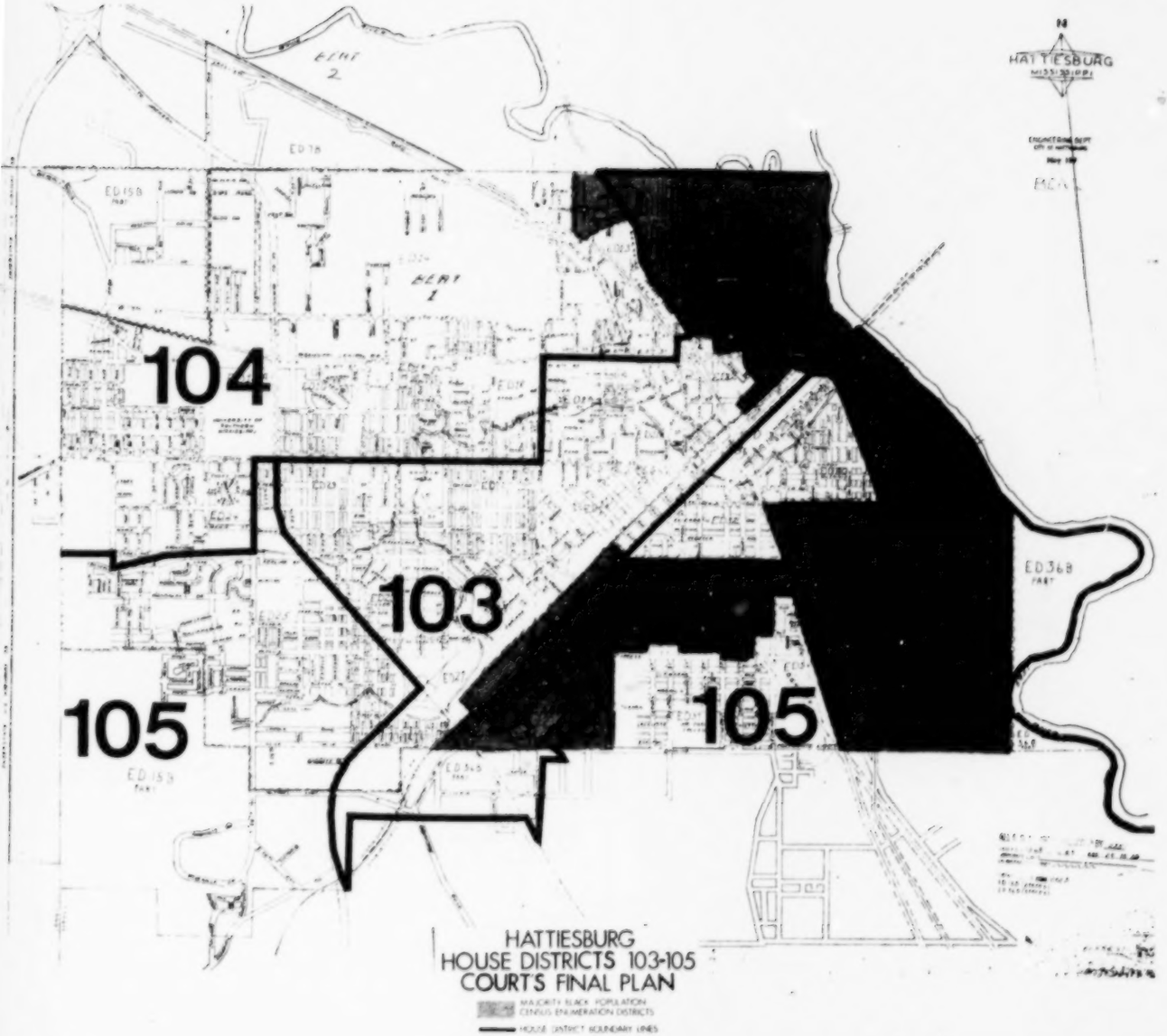
HOUSE DISTRICT BOUNDARY LINES

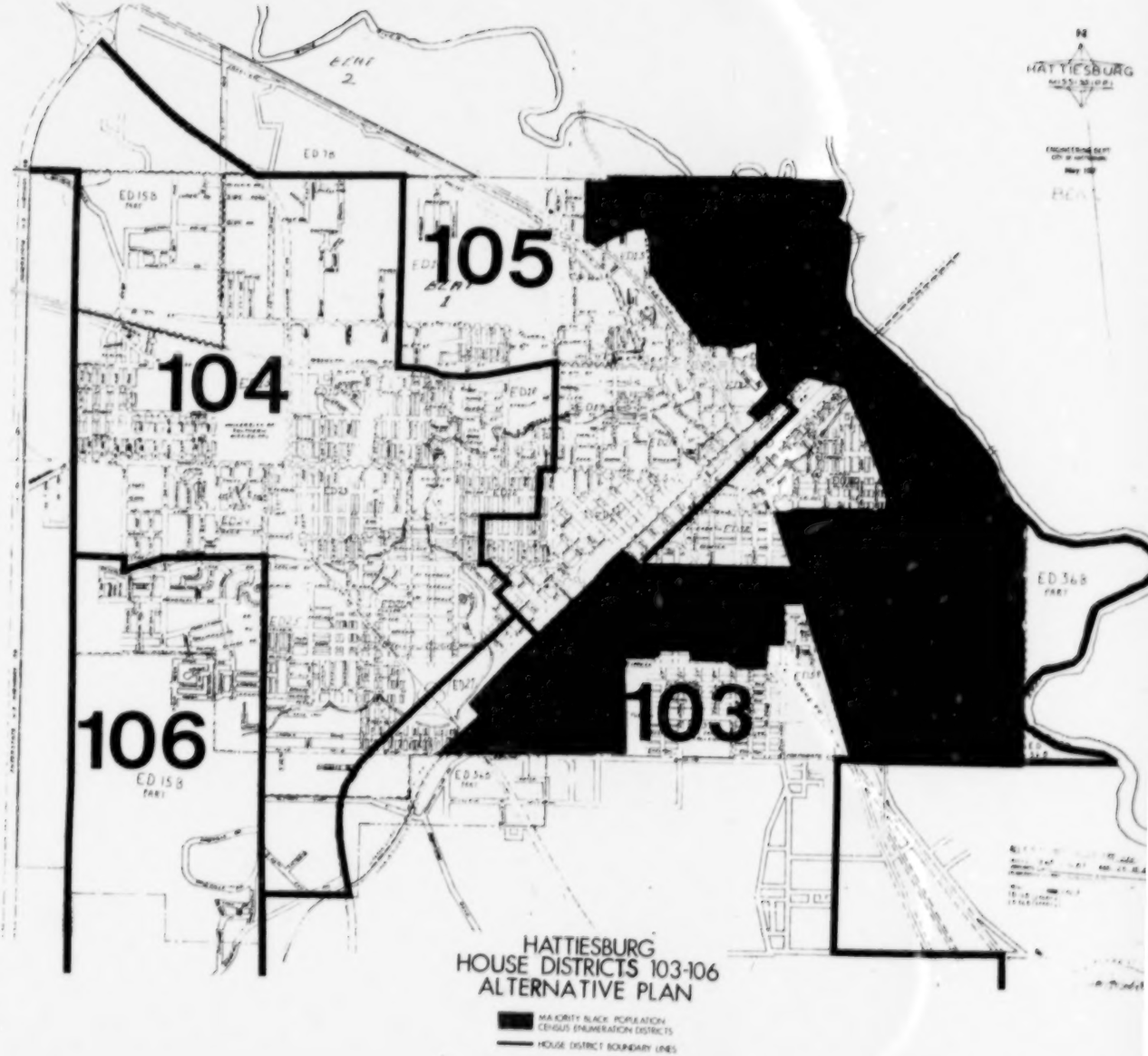


FORREST COUNTY
HOUSE DISTRICTS 103-106
ALTERNATIVE PLAN

MAJORITY BLACK POPULATION CENSUS ENUMERATION DISTRICTS

HOUSE DISTRICT BOUNDARY LINES


HATTIESBURG
104
103
105
105
HATTIESBURG
HOUSE DISTRICTS 103-105
COURTS FINAL PLAN
MAJORITY BLACK POPULATION CENSUS ENUMERATION DISTRICTS
HOUSE DISTRICT BOUNDARY LINES


HATTIESBURG
105
104
106
103
HATTIESBURG
HOUSE DISTRICTS 103-106
ALTERNATIVE PLAN
MAJORITY BLACK POPULATION CENSUS ENUMERATION DISTRICTS
HOUSE DISTRICT BOUNDARY LINES

APPENDIX C-8

Forrest County and Adjoining Counties

COURT'S FINAL PLAN *

House District	Description
103	Forrest County: the Precincts of Lillie Burney, Woodley School, Jones School, Petal High, East Bowie, Petal-Harvey, Camp School, and Hawkins Junior High
104	Forrest County: the Precincts of Blair High, Eatonville, Glendale, Petal-Leeville, Rawls Springs, Macedonia, Davis School, Grace Christian, and Pinecrest
105	Forest County: the Precincts of Central School, Dixie School, Westside, Eaton School, Sunrise, Walthall, Dixie Pine, Rowan High, William Carey, and Thames
106	Forrest County: the Precincts of Forrest County A.H.S., McCallum, McLaurin, Brooklyn, Carnes, and Maxie; Pearl River County: the Precincts of Poplarville East, Poplarville West, Byrd Line, Hickory Grove, Gum Pond, Wolf River, Oak Hill, Hillsdale, Fords Creek, Buck Branch, White Sand, Mill Creek, Derby, Progress, Silver Run, Steep Hollow, Savannah, McNeill, and Caesar; Stone County: Beat 2

* Order of September 8, 1976 (III A. 130-131).

Forrest County and Adjoining Counties

ALTERNATIVE PLAN *

House District	Description
103	Forrest County: Beat 1—the Precincts of Lillie Burney and Central School; Beat 2—the Precinct of Jones; Beat 3—the Precincts of East Bowie, Eaton, and Walthall; Beat 4—the Precincts of William Carey and Rowan
104	Forrest County: Beat 1—the Precincts of Blair, Woodley, and West Side; Beat 2—the Precincts of Rawls Springs and Eatonville; Beat 5—the Precincts of Grace Christian and Pinecrest
105	Forrest County: Beat 2—the Precincts of Petal High School, Petal-Leeville, and Glendale; Beat 3—the Precincts of Macedonia, Sunrise, and Petal-Harvey School; Beat 4—the Precincts of Camp and Hawkins; Beat 5—the Precincts of Davis, McLaurin, McCallum, and Dixie Pine
106	Forrest County: Beat 1—the Precinct of Dixie; Beat 4—the Precinct of Forrest County A.H.S.; Beat 5—the Precincts of Brooklyn, Carnes, Maxie, and Thames. Pearl River County: the Precincts of Poplarville East, Poplarville West, Byrd Line, Hickory Grove, Gum Pond, Wolf River, Oak Hill, Hillsdale, Fords Creek, Buck Branch, White Sand, Mill Creek, Derby, Progress, Silver Run, Steep Hollow, Savannah, McNeill, and Caesar; Stone County: Beat 2

* Ex. F to Objections of the United States to Plans for the Redistricting of the Mississippi Senate and House of Representatives Contained in the Court Orders of August 24 and September 8, 1976, filed October 22, 1976 (III A. 218-219).

Forrest County and Adjoining Counties

COURT PLAN *

UNITED STATES' ANALYSIS OF COURT PLAN **

House District	Total Population	% Deviation	Total Population	Black Population	% Black	Black VAP	% Black VAP	% Deviation
103	17,504	—3.7	17,885	5,130	28.7	2,910	24.5	—1.6
104	17,555	—3.4	18,552	1,097	5.9	622	4.8	+2.1
105	17,799	—2.0	18,560	7,492	40.4	4,249	35.4	+2.1
106	17,377	—4.4	15,238	2,410	15.8	1,305	13.8	—16.1

ALTERNATIVE PLAN **

House District	Total Population	Black Population	% Black	Black VAP	% Black VAP	% Deviation
103	16,582	10,956	66.1	6,214	61.1	—8.7
104	16,962	319	1.9	181	1.5	—6.65
105	19,428	2,668	13.7	1,513	11.4	+6.9
106	17,263	2,186	12.7	1,178	10.6	—5.0

* Statistics provided by the court in its Order of September 8, 1976 (III A. 130-131).

** Statistics calculated by the United States from estimates based on census enumeration district data. Black population percentages derived from U.S. estimates for Pearl River and Stone Counties were applied to the respective total population statistics provided by the Court in order to obtain black population figures for each county.



WASHINGTON COUNTY
HOUSE DISTRICTS 32-35
COURT'S FINAL PLAN

MAJORITY BLACK POPULATION CENSUS ENUMERATION DISTRICTS

HOUSE DISTRICT BOUNDARY LINES



WASHINGTON COUNTY
HOUSE DISTRICTS 32,33,35
ALTERNATIVE PLAN

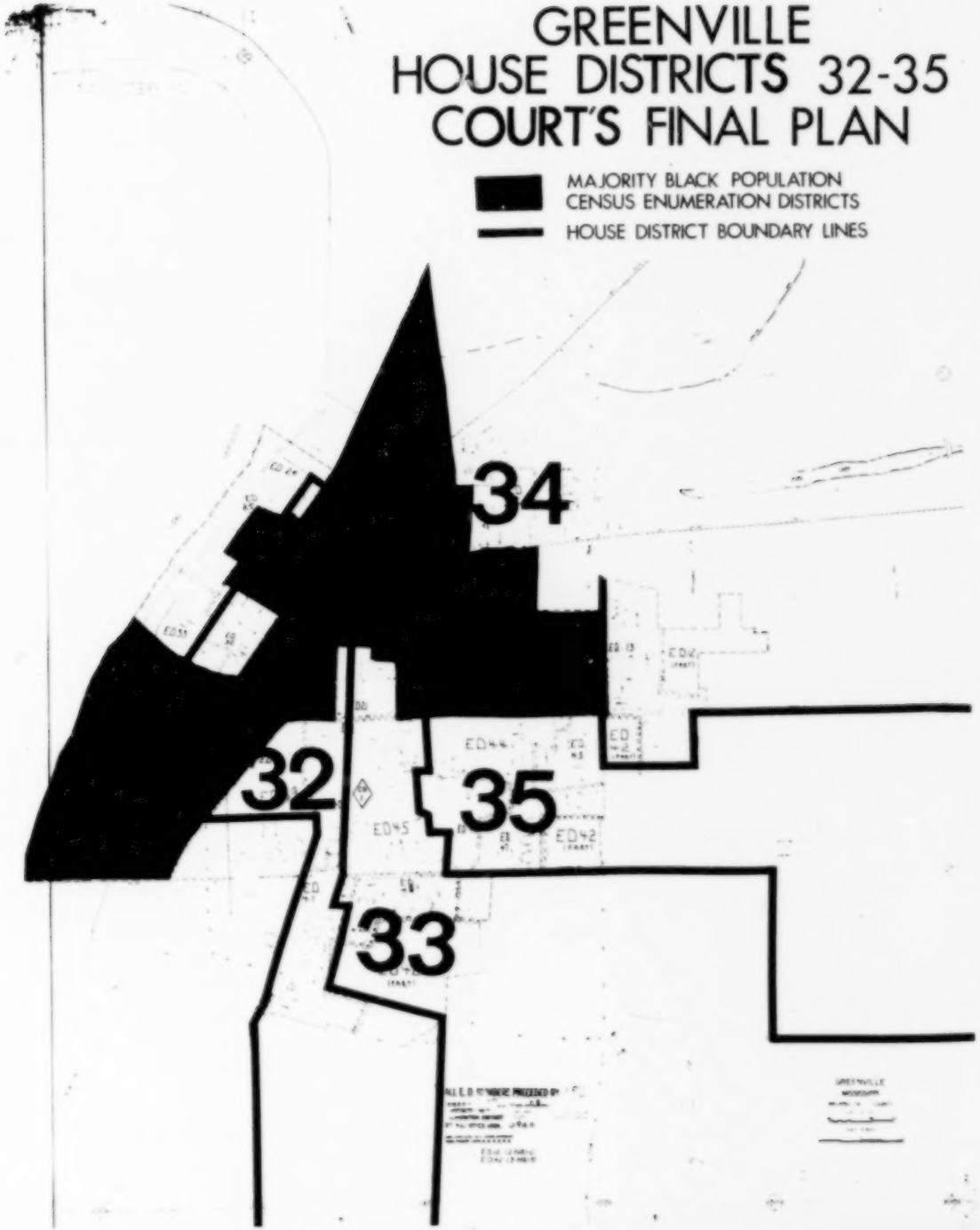
MAJORITY BLACK POPULATION CENSUS ENUMERATION DISTRICTS

HOUSE DISTRICT BOUNDARY LINES

GREENVILLE HOUSE DISTRICTS 32-35 COURT'S FINAL PLAN

MAJORITY BLACK POPULATION CENSUS ENUMERATION DISTRICTS

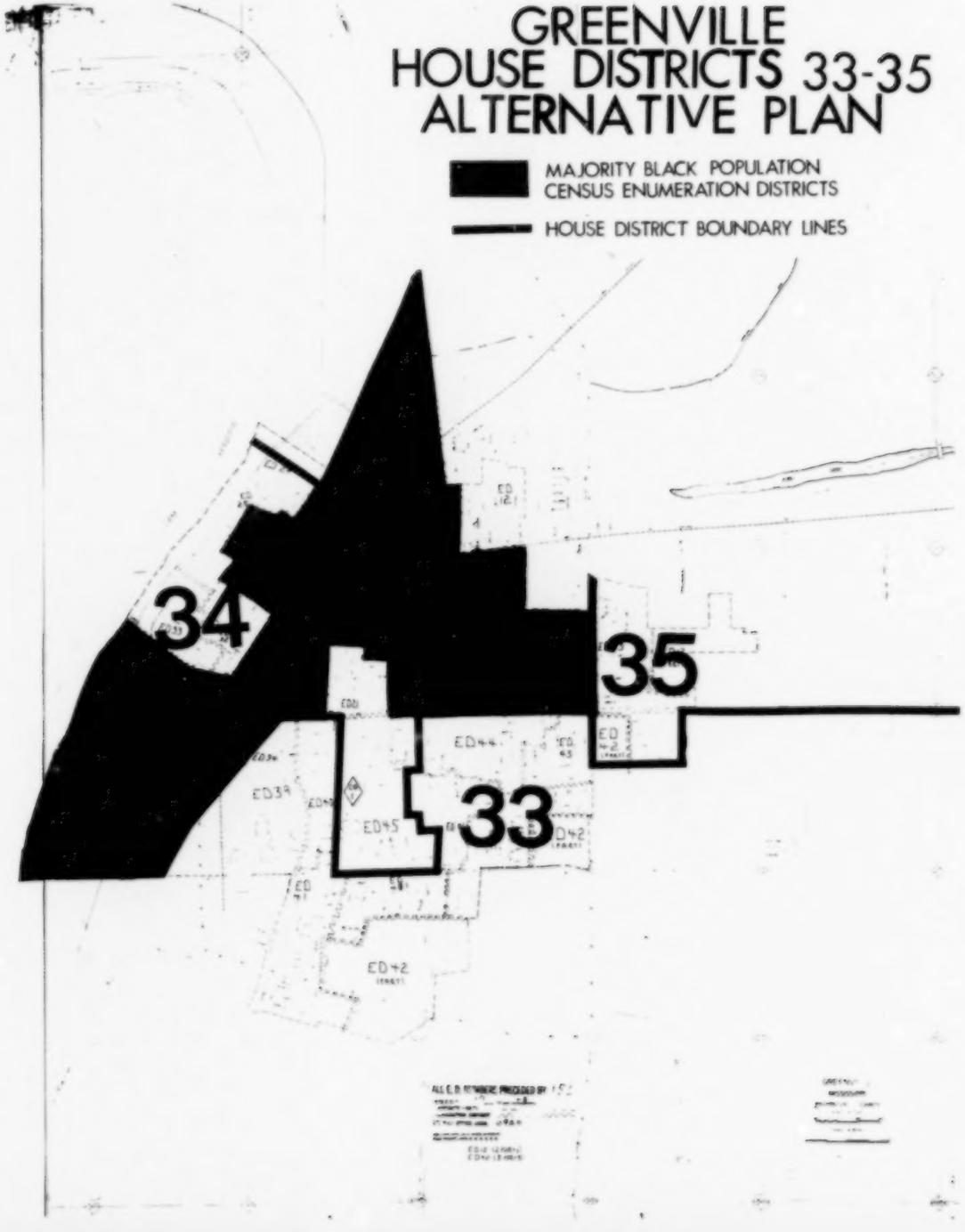
HOUSE DISTRICT BOUNDARY LINES



GREENVILLE HOUSE DISTRICTS 33-35 ALTERNATIVE PLAN

MAJORITY BLACK POPULATION CENSUS ENUMERATION DISTRICTS

HOUSE DISTRICT BOUNDARY LINES



APPENDIX C-11

Washington and Issaquena Counties

COURT'S FINAL PLAN *

House District	Description
32	Issaquena County;
	Washington County: Beat 1, and the Precinct of Avon
33	Washington County: the Precincts of Ward Center, Community Center, Arcola and Hollandale
34	Washington County: Beat 3, and the Precinct of New County Garage
35	Washington County: the Precincts of Darlove, Bourbon, County Recreation Center, Industrial College, Leland Health Clinic, and Leland Light Plant

* Final judgment of November 18, 1976 (III A. 239).

Washington and Issaquena Counties

ALTERNATIVE PLAN *

House District	Description
32	Issaquena County;
	Washington County: the Precincts of Glen Allan, Arcola, Leland City Hall, Hollandale, Darlove, and Bourbon
33	Washington County: the Precincts of Episcopal Church, Wayside Laundry, Ward's Recreation Center, Avon, Italian Club, and County Recreation Center
34	Washington County: the Precincts of Extension Building, Community Center, Brent Center, and Police Station
35	Washington County: the Precincts of County Barn, Leland Light Plant, American Legion, and Industrial Center

* Plaintiffs' Suggested Alternative House Districts, Ex. B-3, Alternative Number 2, Plaintiffs' Supplement to Motion to Alter or Amend Judgment, filed October 8, 1976 (III A. 194).

Washington and Issaquena Counties

COURT PLAN *

House District	Total Population	% Deviation
32	18,205	+0.2
33	17,409	—4.2
34	19,472	+7.2
35	18,232	+0.3

UNITED STATES' ANALYSIS OF COURT PLAN **

House District	Total Population	Black Population	% Black	Black VAP	% Black VAP	% Deviation
32	17,329	10,159	58.6	5,180	53.1	—4.6
33	17,136	9,639	56.2	4,949	50.9	—5.7
34	20,022	11,061	55.2	5,679	49.9	+10.2
35	18,831	9,299	49.4	4,774	47.1	+3.6

ALTERNATIVE PLAN ***

House District	Total Population	Black Population	% Black	Black VAP	% Black VAP	% Deviation
32	18,565	12,097	65.2	6,175	59.9	+2.2
33	18,610	4,672	25.1	2,399	21.3	+2.4
34	17,534	11,657	66.5	5,985	61.6	—3.5
35	18,609	11,732	63.0	6,023	57.9	+2.4

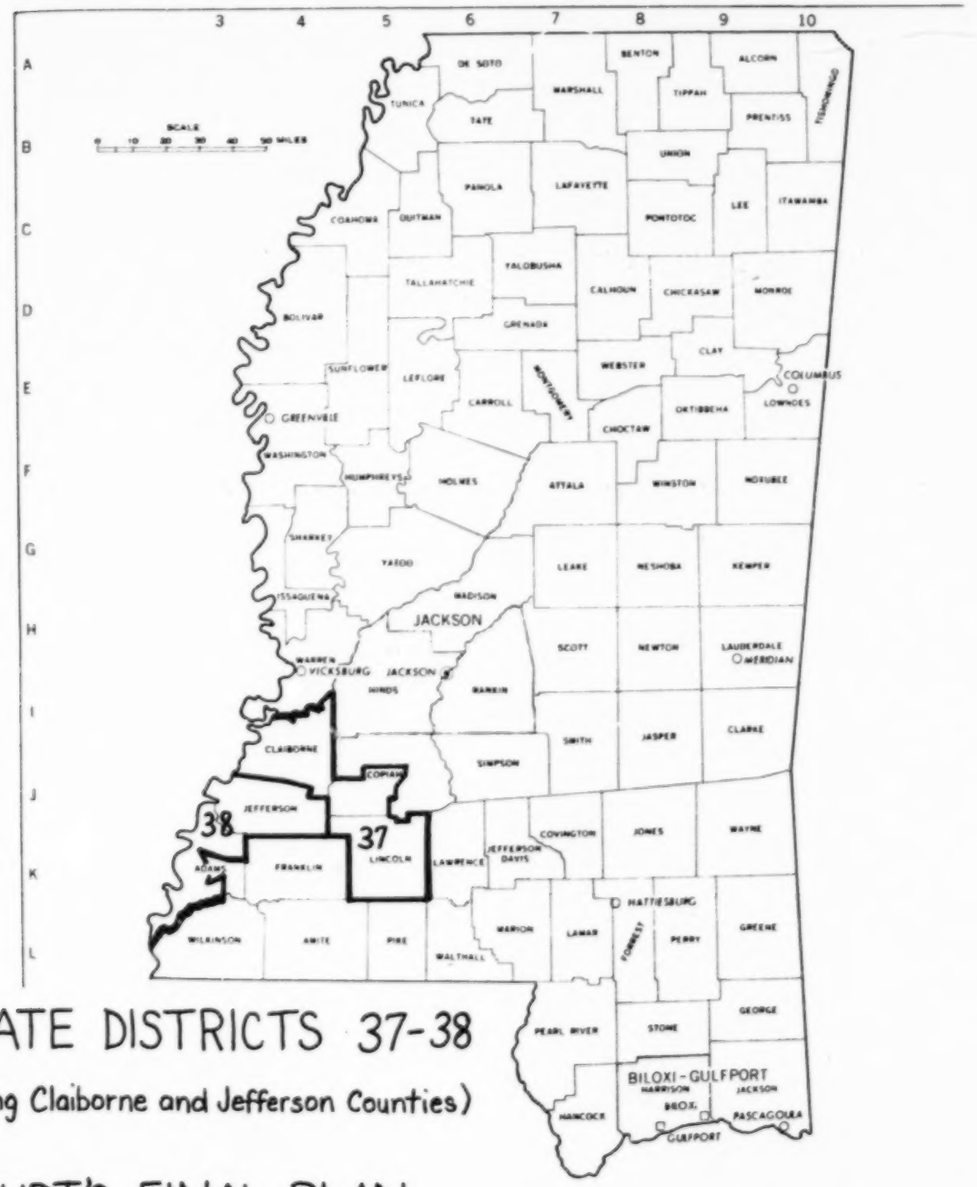
* Statistics provided by the Court in its Order of September 8, 1976 (III A. 122).

** Statistics calculated by the United States from published census data for Issaquena County, and United States' estimates based on census enumeration district data for Washington County.

*** Statistics calculated by the United States from district total population figures provided by Plaintiffs for Alternative No. 2 of Plaintiffs' Supplement to Motion to Alter or Amend Judgment, filed October 8, 1976 (III A. 194).

MISSISSIPPI

Counties, Standard Metropolitan Statistical Areas, and Selected Places



SENATE DISTRICTS 37-38

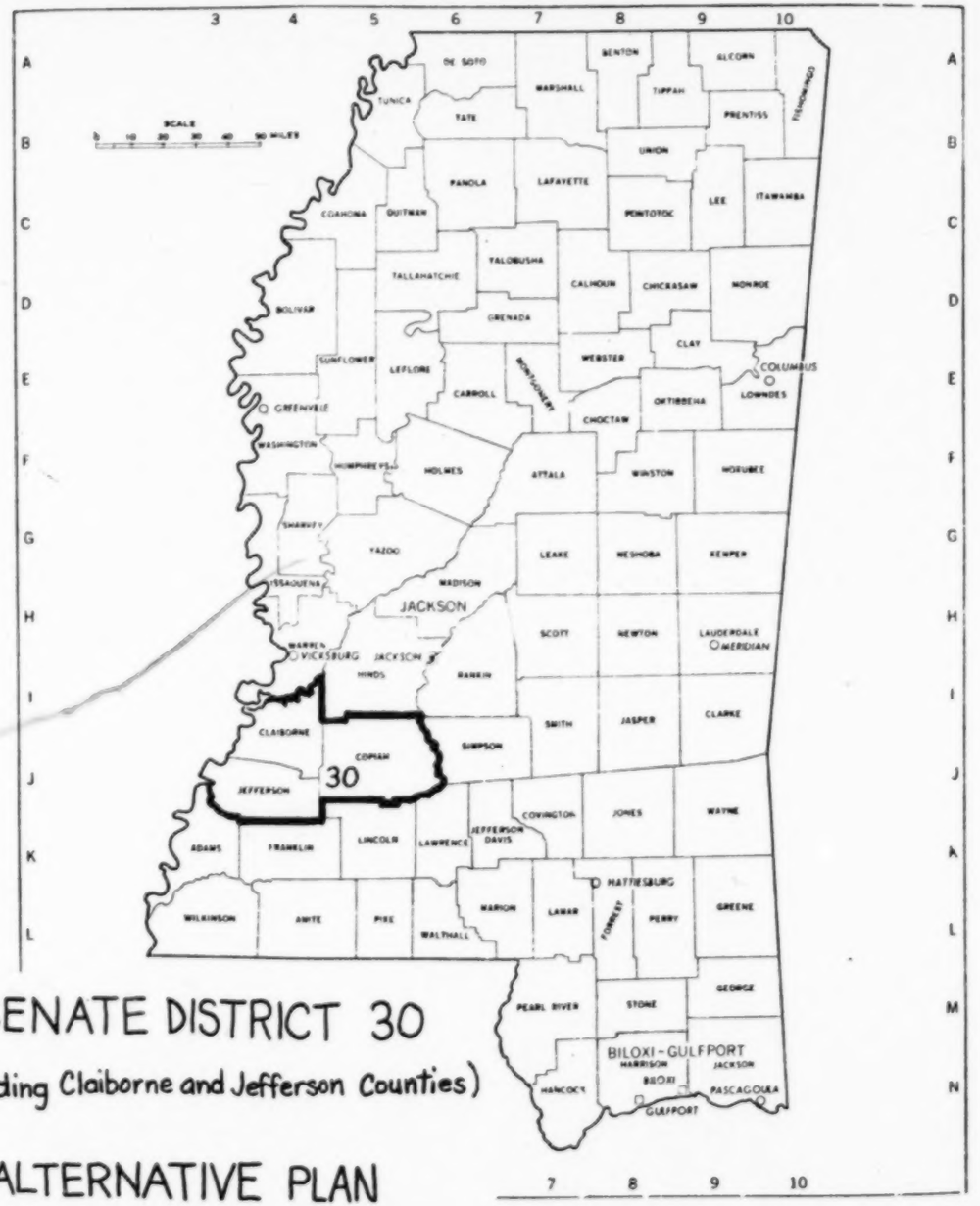
(including Claiborne and Jefferson Counties)

COURT'S FINAL PLAN

SENATE DISTRICT BOUNDARY LINES

MISSISSIPPI

Counties, Standard Metropolitan Statistical Areas, and Selected Places



SENATE DISTRICT 30

(including Claiborne and Jefferson Counties)

ALTERNATIVE PLAN

SENATE DISTRICT BOUNDARY LINES

APPENDIX C-13

Claiborne, Jefferson and Adjoining Counties

COURT'S FINAL PLAN *

Senate District	Description
37	Claiborne County; Lincoln County; and Copiah County: Beat 3
38	Jefferson County; and Adams County: Beats 1, 2, 4, 5

* Final Judgment of November 18, 1976 (III A. 235).

Claiborne, Jefferson and Adjoining Counties

ALTERNATIVE PLAN *

Senate District	Description
30	Claiborne, Jefferson, and Copiah Counties

* Senate County Boundary Plan, Ex. A-1 to Alternative Plans Submitted by the United States Pursuant to Order of July 11, 1975, filed October 31, 1975 (III A. 28).

Claiborne, Jefferson and Adjoining Counties

	Court Plan *		United States' Analysis of Court Plan **					
Senate District	Total Population	% Deviation	Total Population	Black Population	% Black	Black VAP	% Black VAP	% Deviation
37	41,233	—3.3	41,209	18,318	44.5	10,281	39.6	—3.3
38	39,082	—8.3	38,525	21,818	56.6	11,893	52.1	—9.6

Alternative Plan ***

Senate District	Total Population	Black Population	% Black	Black VAP	% Black VAP	% Deviation
30	44,130	26,955	61.1	14,847	55.0	+3.5

* Statistics provided by the court in its Order of August 24, 1976 (III A. 105).

** Statistics calculated by the United States using published census data for Jefferson, Claiborne, and Lincoln Counties and United States' estimates based on census enumeration data for Adams and Copiah counties.

*** Statistics calculated by the United States using published census data.

APPENDIX D

42 U.S.C. 1971(a)(1) and (c) provide:

(a)(1) All citizens of the United States who are otherwise qualified by law to vote at any election by the people in any State, Territory, district, county, city, parish, township, school district, municipality, or other territorial subdivision, shall be entitled and allowed to vote at all such elections, without distinction of race, color, or previous condition of servitude; any constitution, law, custom, usage, or regulation of any State or Territory, or by or under its authority, to the contrary notwithstanding.

* * * * *

(c) Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice which would deprive any other person of any right or privilege secured by subsection (a) or (b) of this section, the Attorney General may institute for the United States, or in the name of the United States, a civil action or other proper proceeding for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order. If in any such proceeding literacy is a relevant fact there shall be a rebuttable presumption that any person who has not been adjudged an incompetent and who has completed the sixth grade in a public school in, or a private school accredited by, any State or territory, the District of Columbia, or the Commonwealth of Puerto Rico where instruction is carried on predominantly in the English language, possesses suffi-

cient literacy, comprehension, and intelligence to vote in any election. In any proceeding hereunder the United States shall be liable for costs the same as a private person. Whenever, in a proceeding instituted under this subsection any official of a State or subdivision thereof is alleged to have committed any act or practice constituting a deprivation of any right or privilege secured by subsection (a) of this section, the act or practice shall also be deemed that of the State and the State may be joined as a party defendant and, if, prior to the institution of such proceeding, such official has resigned or has been relieved of his office and no successor has assumed such office, the proceeding may be instituted against the State.

42 U.S.C. (Supp. V) 1973 provides:

No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title.

42 U.S.C. 1973j(d) provides:

(d) Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice prohibited by section 1973, 1973a, 1973b, 1973c, 1973e, 1973h, 1973i, or subsection (b) of this section, the Attorney General may institute for the United States, or in the name of the United States, an action for preventive relief, including

an application for a temporary or permanent injunction, restraining order, or other order, and including an order directed to the State and State or local election officials to require them (1) to permit persons listed under this subchapter to vote and (2) to count such votes.

42 U.S.C. (Supp. V) 2000h-2 provides:

Whenever an action has been commenced in any court of the United States seeking relief from the denial of equal protection of the laws under the fourteenth amendment to the Constition on account of race, color, religion, sex or national origin, the Attorney General for or in the name of the United States may intervene in such action upon timely application if the Attorney General certifies that the case is of general public importance. In such action the United States shall be entitled to the same relief as if it had instituted the action.

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FOR ARGUMENT

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

PEGGY J. CONNOR, et al., *Appellants*
and
UNITED STATES OF AMERICA, *Intervenor*
v.
CLIFF FINCH, Governor of Mississippi, et al.

CLIFF FINCH, Governor of Mississippi, et al.
Appellants
v.
PEGGY J. CONNOR, et al., and the
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UNITED STATES OF AMERICA, *Appellant*
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PEGGY J. CONNOR, et al., *Appellants*
v.
CLIFF FINCH, Governor of Mississippi, et al.

On Appeal from the United States District Court for the Southern District of Mississippi (Three-Judge Court)

REPLY BRIEF FOR THE STATE PARTIES

WILLIAM A. ALLAIN
Special Counsel
Post Office Box 220
Jackson, Mississippi 39205

JERRIS LEONARD
THOMAS A. KAROL
Special Counsel
1747 Pennsylvania Ave., N.W.
Washington, D.C. 20006

A. F. SUMMER
Attorney General, State of Mississippi

GILES W. BRYANT
Special Assistant Attorney General
Gartin Justice Building
Jackson, Mississippi 39201

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TABLE OF CONTENTS

	Page
I. Racial Dilution in the Political Processes Does Not Exist in Mississippi	2
A. Racial Dilution in Reapportionment Plan	2
B. Mississippi and the Absence of Dilution	11
1. Absence of Lingering Effects	11
2. The Mississippi Legislature Has Been and Is Responsive to the Needs of All Citizens of the States, Be They Black or White	18
3. History of Multi-member Districts and Apportionment in Mississippi	19
II. A Court in Exercising Its Remedial Powers Is Not Required Nor Permitted To Racially Gerrymander	21
A. Racial Gerrymandering for Any Purpose Is Unconstitutional	21
B. Permissible Boundaries in Formulating a Court-Ordered Plan	27
C. Evaluation of the Plans	31
III. Request for Special Elections	36
IV. Attorney Fees	41
Conclusion	46

CITATIONS

Cases:

Abate v. Mundt, 403 U.S. 182 (1971)	31
Arkansas v. Tennessee, 246 U.S. 158 (1918)	44
Baker v. Carr, 369 U.S. 186 (1962)	20
Beer v. United States, 425 U.S. 130 (1976)	22, 40
Belknap v. Schild, 161 U.S. 11 (1896)	44
Bradas v. Rapides Parish Policy Jury, 508 F.2d 1109, (5th Cir. 1975)	3-4

Page

Bradley v. Richmond School Board, 416 U.S. 696 (1974) 41
Burns v. Richardson, 384 U.S. 73 (1966) 27
Chapman v. Meier, 420 U.S. 1 (1975) 28, 29
Christian v. Atlantic and Northern Carolina Railroad Co., 133 U.S. 233 (1890) 44
City of Kenosha v. Bruno, 412 U.S. 507 (1973) 43
Connor v. Johnson, 402 U.S. 690 (1971) 27
Connor v. Waller, 421 U.S. 656 (1975) 27, 28
Connor v. Waller, 396 F.Supp. 1308 (S.D. Miss. 1975) 11, 18, 19
Connor v. Williams, 404 U.S. 549 (1972) 27
Cousins v. City Council of City of Chicago, 466 F.2d 830 (7th Cir. 1972), *cert. denied,* 409 U.S. 893 26
DeFunis v. Odegaard, 416 U.S. 312 (1974) 27
Durfee v. Duke, 375 U.S. 106 (1963) 44
Edelman v. Jordan, 415 U.S. 651 (1974) 41
Ex Parte Ayers, 123 U.S. 443 (1887) 44
Ferrell v. Hall, 406 U.S. 939 (1972) 26
Ferrell v. State of Oklahoma Ex. Rel. Hall, 339 F.Supp. 73 (W.D. Okla. 1972) 26
Fitzpatrick v. Bitzer, — U.S. —, 96 S. Ct. 2666 (1976) 41, 42, 43
Ford Co. v. Dept. of Treasury, 323 U.S. 459 (1945) .. 44
Gaffney v. Cummings, 412 U.S. 735 (1973) 30
Georgia v. United States, 411 U.S. 526 (1973) 40
Gray v. Sanders, 372 U.S. 368 (1963) 25
Great Northern Ins. Co. v. Read, 322 U.S. 47 (1944) .. 44
Howard v. Adams County Board of Supervisors, 453 F.2d 455 (5th Cir. 1972), *cert. denied,* 407 U.S. 925 .....4, 8, 9
Hughes v. Superior Court, 339 U.S. 460 (1950) 27
Kennecott Copper Corp. v. Tax Comm'n, 327 U.S. 573 (1946) 44
Kirksey v. Board of Supervisors of Hinds County, 528 F.2d 536 (5th Cir. 1976) 14
Kirksey v. Board of Supervisors of Hinds County, 402 F.Supp. 658 (S.D. Miss. 1975), *aff'd,* 528 F.2d 536 (5th Cir. 1976) (awaiting decision of rehearing *en banc*) 13-14, 15, 16, 17
Lemon v. Kurtzman, 411 U.S. 192 (1973) 39
Love v. McGee, 297 F.Supp. 1314 (S.D. Miss. 1968) .. 16
Mahan v. Howell, 410 U.S. 315 (1973) 27, 30, 31

Page

McGill v. Gadsen County Commission, 535 F.2d 277 (5th Cir. 1976) 11, 19
Monroe v. Pape, 365 U.S. 167 (1961) 43
Moore v. Leflore County Board of Election Com'rs, 502 F.2d 621 (5th Cir. 1974) 4
Moore v. Leflore County Board of Election Com'rs, 361 F.Supp. 603 (N.D. Miss. 1972), *aff'd,* 502 F.2d 621 (5th Cir. 1974) 46
Newman v. Piggie Park Enterprises, Inc., 390 U.S. 400 (1968) 41
Paige v. Gray, 538 F.2d 1108 (5th Cir. 1976) 11
Plessy v. Ferguson, 163 U.S. 537 (1896) 23
Provident Bank v. Patterson, 390 U.S. 102 (1968) 44
Reynolds v. Sims, 377 U.S. 533 (1964) 31
Robinson v. Commissioners Court, Anderson County, 505 F.2d 675 (5th Cir. 1974) 46
Shields v. Barrow, 17 How. 130 44
Sims v. Amos, 336 F.Supp. 924 (M.D. Ala. 1972), *aff'd,* 409 U.S. 942 (1972) 40
Swann v. Adams, 385 U.S. 440 (1967) 30
Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1 (1971) 39
Taylor v. McKeithen, 407 U.S. 191 (1972) 4
Taylor v. McKeithen, 499 F.2d 893 (5th Cir. 1974) ... 4, 5
Turner v. McKeithen, 490 F.2d 191 (5th Cir. 1973) ... 4
United States v. Nixon, 418 U.S. 683 (1974) 45
United States v. Romana, 382 U.S. 136 (1965) 45
Wallace v. House, 425 U.S. 947 (1976) 41
Western Union Telegraph Co. v. Pennsylvania, 368 U.S. 71 (1961) 44
Whitcomb v. Chavis, 403 U.S. 124 (1971) 9, 22
White v. Regester, 412 U.S. 755 (1973) 3, 28, 30
Wright v. Rockefeller, 376 U.S. 52 (1964) ..22, 23, 24, 25, 26
Zimmer v. McKeithen, 485 F.2d 1297 (5th Cir. 1973) (en banc), *aff'd on other grounds sub nom.,* East Carroll Parish School Bd. v. Marshall, 424 U.S. 636 (1976) 3

Page

CONSTITUTION, STATUTES:

United States Constitution:
Eleventh Amendment 43
Fourteenth Amendment 42

Federal Rules of Civil Procedure:
Rule 19 44
Rule 25(d) 43

42 United States Code:
Section 1973*l*(e) 41, 42
Section 1983 43
Section 2000e 42

Civil Rights Attorneys' Fees Awards Act of 1976, P.L. 94-559, 90 Stat. 2641 .....41, 42

Mississippi Constitution of 1890:
Section 254 20
Section 255 20

Article XI, Miss. Const. of 1869, Revised Code of 1871 20

Hutchinson's Mississippi Code of 1848 20

MISCELLANEOUS:

Joint Center for Political Studies, NATIONAL ROSTER OF BLACK ELECTED OFFICIALS (August, 1976) 13

Kirwan, *Apportionment in the Mississippi Constitution of 1890,* 14 J. SOUTHERN HIST. 234 (1948) 21

Kirwan, REVOLT OF THE REDNECKS (1965) 21

U.S. BUREAU OF THE CENSUS CURRENT POPULATION REPORTS: POPULATION ESTIMATES AND PROJECTIONS, "1973 Population and 1972 Per Capita Income Estimates for Counties and Incorporated Places in Mississippi," Series P25, No. 569 (June, 1975) 34

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-777

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v.

CLIFF FINCH, Governor of Mississippi, et al.

No. 76-933

CLIFF FINCH, Governor of Mississippi, et al., *Appellants*

v.

PEGGY J. CONNOR, et al., and the UNITED STATES OF AMERICA

No. 76-934

UNITED STATES OF AMERICA, *Appellant*

v.

CLIFF FINCH, Governor of Mississippi, et al.

No. 76-935

PEGGY J. CONNOR, et al., *Appellants*

v.

CLIFF FINCH, Governor of Mississippi, et al.,

On Appeal from the United States District Court for the Southern District of Mississippi (Three-Judge Court)

REPLY BRIEF FOR THE STATE PARTIES

ARGUMENT

Plaintiffs and intervenor in their opening briefs argue this case in the context of the past. This case is not before this Court with the facts of 1960. It is the political realities of 1977 that this Court must address in directing the fashioning or reviewing of any reapportionment plans.

Moreover, in discussing racial dilution in the permanent court-ordered plan, plaintiffs and intervenor argue that anytime a legislative district could have been drawn so as to *maximize* the opportunity to elect a black legislator, failure to so draw the lines was dilution. In effect, they argue that the district court was under an affirmative duty to racially gerrymander on behalf of black voters in Mississippi. Not only is such racial gerrymandering not mandated by law, equity or the Constitution, it is repugnant to all three.

While both the 1979 permanent court-ordered plan and the 1975 temporary court-ordered plan comply with all constitutional requirements, and neither in any legal, equitable or constitutional sense dilutes the black vote, the 1975 temporary plan is the preferable plan. The 1979 permanent plan fragments county lines and thus impinges on the basic political institution of Mississippi. Such disregard of Mississippi's well-established and rational state policy under the prior decisions of this Court is an abuse of judicial discretion.

I. RACIAL DILUTION IN THE POLITICAL PROCESS DOES NOT EXIST IN MISSISSIPPI.

A. Racial Dilution in Reapportionment Plans

Beginning with consideration of the constitutionality of the State's 1975 legislative reapportionment

plan, racial dilution became a central issue (Supp. App. 75a). Prior to that time, the validity of the reapportionment plans had focused on the one person-one vote issue. The present challenges to the district court's 1975 and 1979 reapportionment plans are framed almost exclusively in terms of racial dilution. Thus, it becomes necessary to define exactly what is racial dilution and the extent, if any, of its existence in Mississippi.

Dilution is where a particular apportionment scheme operates to minimize or cancel out the voting strength of the minority elements. To sustain a claim of racial dilution, "it is not enough that the racial group allegedly discriminated against has not had legislative seats in proportion to its voting potential." *White* v. *Regester,* 412 U.S. 755, 765-766 (1973). The group alleging discrimination has the burden of producing evidence, *Id.* at 766, that it has been denied access to the political processes.

Two of the relevant factors in determining access to the political processes include the opportunity to participate in the candidate selection process, *White* v. *Regester, supra,* 412 U.S. at 766, and the responsiveness of the elected representatives to the needs of the minority group, *Zimmer* v. *McKeithen,* 485 F.2d 1297 (5th Cir. 1973) (*en banc*), *aff'd on other grounds sub nom., East Carroll Parish School Bd.* v. *Marshall,* 422 U.S. 1055 (1976).

Past discrimination does not prove dilution. For there to be present dilution, it must be proven that there are *continuing effects* of past discrimination that impair the minority group's present ability to participate in the political processes. *Bradas* v. *Rapides*

Parish Police Jury, 508 F.2d 1109, 1112 (5th Cir. 1975); *Turner* v. *McKeithen,* 490 F.2d 191, 194 (5th Cir. 1973).

While giving lip service to the principles of racial dilution enunciated above, plaintiffs and intervenor argue a definition of dilution that has no constitutional basis. Plaintiffs and intervenor begin by finding that whenever "heavy black population concentrations are unnecessarily fragmented and dispersed, or combined with heavier white population concentrations to create districtwide white majorities" there exists unconstitutional racial dilution (Plaintiffs Br. 52; Intervenor Br. 38). Plaintiffs and intervenor cite four cases,[1] none of which support their proposition.

In *Taylor* v. *McKeithen,* 407 U.S. 191 (1972), this Court vacated a court of appeals decision which had modified, in part, a district court adoption of a particular reapportionment plan. The case was remanded to the court of appeals to explain its modification. *Id.* at 193-194. On remand the court of appeals reaffirmed in a lengthy opinion its earlier decision. *Taylor* v. *McKeithen,* 499 F.2d 893 (5th Cir. 1974). At issue in *Taylor* was whether a district court had exceeded the bounds of judicial discretion in adopting a reapportionment plan that created two "safe" black districts.

The four districts approved by the district court, and at issue on appeal, involved a conceded racial gerrymander so as to *guarantee* the election of blacks

[1] *Taylor* v. *McKeithen,* 407 U.S. 191 (1972); *Robinson* v. *Commissioners Court, Anderson County,* 505 F.2d 674 (5th Cir. 1974); *Moore* v. *Leflore County Board of Election Com'rs,* 502 F.2d 621 (5th Cir. 1974); *Howard* v. *Adams County Board of Supervisors,* 453 F.2d 455 (5th Cir. 1972), *cert. denied,* 407 U.S. 925 (1972).

in two of the districts.[2] *Taylor* v. *McKeithen, supra,* 499 F.2d at 902. In the alternative plan rejected by the district court, no "safe" districts were created that would guarantee a black representative.[3] *Ibid.* The alternative plan adhered to the traditional ward boundaries, whereas the plan adopted by the district court fragmented ward lines. *Id.* at 902-903. The district court had concluded that historical boundaries of voting districts in Louisiana had reflected a history of racial discrimination and had been the prime reason why only two blacks had been elected to the state legislature in the last 75 years. *Id.* at 896. The court of appeals found that conclusion erroneous stating that "it was never necessary for the legislature to resort to covert disenfranchisement of blacks by manipulating the boundaries of legislative voting districts" because of the total effectiveness of the overt methods of disenfranchising blacks. *Ibid.*

On remand from this Court, the court of appeals specifically avoided deciding the issue whether "'it is constitutionally permissible to use race explicitly as a criterion in reapportionment, when the goal of racial districting is purportedly benign.'" *Taylor* v. *McKeithen, supra,* 499 F.2d at 910. However, the court of appeals held that the district court's preference for the gerrymandered districts exceeded the bounds of judicial discretion. *Id.* at 911. The court of appeals reinstated its original judgment which approved the alternative reapportionment plan. *Ibid.*

[2] The two "safe" districts contained black population percentages of 70.2% and 64.0%. *Taylor* v. *McKeithen, supra,* 499 F.2d at 901.

[3] The black population percentages in the four districts of the alternative plan were 42.6%, 43.7%, 54.4% and 42.0%. *Ibid.*

In *Robinson* v. *Commissioners Court, Anderson County,* 505 F.2d 674 (5th Cir. 1974), the court of appeals affirmed a district court's decision that a reapportionment plan in Anderson County, Texas was a racially motivated gerrymander designed to dilute the voting strength of the black community. In affirming, the court of appeals stated:

> The district court determined on this record that the County Commissioners' apportionment *was designed precisely to dilute the black vote* and, mindful of the trial court's peculiarly local perspective, we find no reason on this record to reject that conclusion as clearly erroneous. *Id.* at 679 (emphasis supplied; footnote omitted).

In this case, *sub judice* the district court has never found the State Legislature's plans to be racially motivated gerrymanders,[4] nor do the plaintiffs and intervenor prove a racially motivated gerrymander on the part of the district court in the formulation of its reapportionment plans.

In *Moore* v. *Leflore County Board of Election Com'rs,* 361 F. Supp. 603 (N.D. Miss. 1972), *aff'd,* 502

[4] While plaintiffs have at times contended that the State's reapportionment plans were racially motivated gerrymanders (Plaintiffs Br. 72), their contentions have proven baseless. *See, e.g.* the testimony of Dr. Gordon Henderson, a witness on behalf of plaintiffs at the May 7, 1975 hearings regarding the 1975 State legislative plan. At the hearings, on direct examination Dr. Henderson initially testified that the Legislature's plan did not constitute an honest and good-faith effort (App.Vol.II, 53) and was a racial gerrymander (App.Vol.II, 54). On questioning by the court regarding those allegations, Dr. Henderson substantially modified his prior position stating that the gerrymander was resultive, not deliberate (App.Vol.II, 78). He further clarified his allegation of lack of good faith, by stating he was referring to good faith not in terms of motive, but in terms of results (App.Vol.II, 79-80).

F.2d 621 (5th Cir. 1974), the district court found "systematic and *intentional* diluting of black voting strength by gerrymandering" 361 F.Supp. at 607 (emphasis supplied). The drafters of the redistricting plan had admitted fragmenting the concentration of black residents in an attempt to create five districts that reflected for each district the same racial ratio, i.e., 58% black to 42% white, as existed for the county as a whole. *Id.* at 604. The plan failed "to make any effort to correlate road mileage, bridge maintenance, land area, with population or to consider natural boundaries and compactness of each district along with equality of functions on the part of each supervisor and law enforcement personnel. . . . There [was] no evidentiary basis for concluding that Leflore County present[ed] any unique or peculiar problems that preclud[ed] the use of several legitimate planning objectives other than equality of population in developing a meritorious plan." *Id.* at 608-609. In finding the reapportionment plan unconstitutional, the court explicitly stated that it did,

> not place its imprimatur upon concentrating blacks within one or more districts to emphasize their voting strength, but only that the race of people cannot be considered in reapportionment. 'The Federal Constitution is color blind. It is equally as unconstitutional to discriminate against a white man as it is to discriminate against a colored man....' *Id.* at 607.

Thus, the very case upon which plaintiffs rely for the proposition that reapportionment plans must not disturb black concentrations refutes any such deliberate racial considerations in formulating a reapportionment plan.

Intervenor cites *Howard* v. *Adams County Board of Supervisors,* 453 F.2d 455 (5th Cir. 1972), *cert. denied,* 415 U.S. 975 (1974), for the antithesis of what the decision held (Intervenor Br. 38). In *Howard,* the Board of Supervisors of Adams County, Mississippi, adopted a reapportionment plan that achieved the goal of one person-one vote. A second objective that was achieved by the plan was the equalization of the responsibilities of each supervisor in exercising their traditional function of highway and bridge maintenance. This objective necessitated a plan that consolidated urban and rural areas into each district.

> As the new plan was developed, therefore, each district converged in spokelike fashion from a broad rural base into the City of Natchez. This dissection of the population concentration of the county resulted in an equal allocation of the population of Natchez among the new districts. *Id.* at 456.
>
> * * *
>
> The allocation of the population concentration of the city resulted in the removal of some 7000 blacks from old Supervisor District Four, where prior to the implementation of the plan 60% of the blacks in the county lived and commanded a 75% population majority. These blacks, now residing in new districts other than Four, found themselves in electoral districts where blacks no longer represented a majority of the population. The reallocation of the population of Natchez, on the other hand, substantially balanced the racial ratio of the population in new Districts Three, 51% white, 49% black, and One, 55% white, 45% black, and resulted in a significant amelioration of the racial population disparities in the other two districts, although whites there continued to constitute a 60%-40% population majority. *Id.* at 457.

Plaintiffs objected to the plan as a racially motivated gerrymander that unconstitutionally diluted the voting power of blacks. The identical contention argued by plaintiffs in this case was argued in *Howard, supra,* 453 F.2d at 457:

> Specifically, plaintiffs argue that this dilution is represented by the difference in effective voting power blacks now command in Adams County, under the new plan, and the effective voting power blacks could command if the revision had been drawn to recognize their population segment of northwestern Adams County as numerically large enough and geographically contiguous enough, to constitute two electoral districts in which blacks would retain a significant population majority.

The court of appeals affirmed the district court finding that the plaintiffs failed to sustain their burden of showing that the new plan unconstitutionally diluted, minimized, or cancelled the voting strength of the black citizens of Adams County. *Howard, supra,* 453 F.2d at 458. Relying upon this Court's decision in *Whitcomb* v. *Chavis,* 403 U.S. 124 (1971), the court of appeals stated:

> Further, we reject the plaintiffs' notion that they are constitutionally entitled to have old District Four divided into two predominantly black electoral districts simply because they command a population concentration of sufficient size and contiguity to constitute two equally apportioned districts. *Howard, supra,* 453 F.2d at 458.

Plaintiffs and intervenor further argue that the measuring stick for determining dilution is voting age population (VAP), rather than general population (Plaintiffs Br. 56; Intervenor Br. 52). They reason

that since "[o]nly those of voting age can have an effect on the political processes" and that "[s]ince the black proportion of the VAP in Mississippi is less than that of the general population," then voting age population is the determining factor in racial dilution (Intervenor Br. 52).

But, according to the proposition argued by plaintiffs and intervenor, the inquiry into determining dilution does not end with finding a majority black voting age population. Plaintiffs and intervenor theorize that "more than a bare majority of the VAP [voting age population] is necessary to enable Mississippi blacks to elect a candidate of their choice" (Intervenor Br. 53; Plaintiffs Br. 43-44). Intervenor has established 54% black voting age population as the "minimum racial composition needed for blacks to have a working majority in a district" (Intervenor Br. 53, fn. 46).

Finally, plaintiffs and intervenor contend that even where the blacks represented 54% or more of the voting age population, if the district was multi-member there was racial dilution (Plaintiffs Br. 65-66; Intervenor Br. 66-67).

In short, plaintiffs and intervenor are contending that whenever district lines can be drawn to create a district that would guarantee the election of a black legislator—i.e., a "safe district"—failure to so draw district lines is dilution. Plaintiffs and intervenor are not so much concerned with the constitutional principle of one person-one vote as they are with attempting to create districts that will *maximize* the number of black legislators that can be elected. *See,* Intervenor Br. 59. One example is plaintiffs' contention that the district court should have accepted plaintiffs' alternative plan

for Warren County, which would have created a black population majority district, although plaintiffs concede that their plan provides "slightly higher population variances" (Plaintiffs Br. 45). Further evidence of plaintiffs' and intervenor's attempt to maximize the number of black legislators elected without any real concern for remedying an unconstitutional dilution is their argument for special elections. Their argument boils down to the desire to hold special elections wherever there is a greater chance under the permanent plan than the temporary plan to elect a black legislator (*See,* Plaintiffs Br. 68; Intervenor Br. 33).

B. Mississippi and the Absence of Dilution

1. *Absence of Lingering Effects*

The district court specifically found that plaintiffs failed to demonstrate any present impact from past discrimination. *Connor* v. *Waller,* 396 F.Supp. 1308, 1325 (S.D. Miss. 1975) (App. Vol. III, 225). Moreover the district court significantly determined that:

> The Voting Rights Act of 1965 has effectively reduced all such racially discriminatory factors to what may be termed an irreducible minimum (App. Vol. III, 226).

Plaintiffs and intervenor predicate their case on a history of the past (Plaintiffs Br. 35; Intervenor Br. 42) —a history that is a remote history. However, the significance of the past in dilution cases lies in how it bears on political participation today. *McGill* v. *Gadsen County Commission,* 535 F.2d 277 (5th Cir. 1976); *Paige* v. *Gray,* 538 F.2d 1108 (5th Cir. 1976).

This Court in *Whitcomb* v. *Chavis,* 403 U.S. 124, enunciated the criteria evidencing invidious discrimination in the political processes:

> We have discovered nothing in the record or in the court's findings indicating that poor Negroes were not allowed to register or vote, to choose the political party they desired to support, to participate in its affairs or to be equally represented on those occasions when legislative candidates were chosen. Nor did the evidence purport to show or the court find that inhabitants of the ghetto were regularly excluded from the slates of both major parties, thus denying them the chance of occupying legislative seats. 403 U.S. at 149-150.

Similarly, the voluminous record in this case is noticeably lacking of evidence of invidious discrimination. Dr. Gordon G. Henderson, testifying on behalf of plaintiffs, admitted that he knew of no blacks in Mississippi having any difficulty in voting within the last five years (hearing of May 7, 1965, App. Vol. II, 73); nor did he know of instances where race prevented an individual from qualifying as a candidate for a desired office, participating in the candidate election process or any other portion of the political process (*Id.,* App. Vol. II, 73-74).

Reverend Rims Barber, Associate Director of the Delta Ministry, an organization "to assist persons and groups of people who are oppressed by poverty or by discrimination in the State of Mississippi" (hearing of May 7, 1975, App. Vol. II, 81-82) also testified on behalf of plaintiffs. Reverend Barber testified that from "65 to 70 percent of voting age eligible blacks . . . are registered" (App. Vol. II, 84-85) and that "[t]he turnouts range from 60 percent to 70 percent for blacks

on an average statewide and from around 75 to 80 percent for whites in an election of the magnitude of the '71 gubernatorial election" (*Id.* App. Vol. II, 86).

Plaintiffs and intervenor argue that these black voter registration and turnout figures demonstrate lingering effects of past discrimination (Plaintiffs Br. 55; Intervenor Br. 42). However, the 65-70 percent black voter registration in Mississippi exceeds the national and regional averages. Only 55 percent of the voting age eligible blacks in the nation are registered to vote (54 percent are registered in the North and West and 55 percent in the South).[5] Likewise, the 60 percent to 70 percent turnout rate for blacks in Mississippi exceeds the national and regional averages (i.e. 34 percent for the nation, 38 percent for the North and West and 30 percent for the South).[6]

The district court's findings on present day political participation by blacks cannot be overemphasized:

> We have no difficulty in holding that at the present day interference with the right of black citizens to cast their ballots is a myth. (App. Vol. III, 225-226)

Another United States District Judge for the Southern District of Mississippi reached substantially the same conclusion when reviewing the same "evidence" presented in *Kirksey* v. *Board of Supervisors of*

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[5] Joint Center for Political Studies, NATIONAL ROSTER OF BLACK ELECTED OFFICIALS, Vol. 6, p. xiv (August, 1976).

[6] *Ibid.*

Hinds County, Mississippi, 402 F.Supp. 658 (S.D. Miss 1975):[7]

> There is absolutely no evidence in this record that any person has been denied the right to register or to vote because of his race since the enactment of the Voting Rights Act of 1965. 402 F.Supp. at 672.

Such a finding is supported by plaintiffs' own witnesses. Reverend Rims Barber testified that "technical bars to political participation are 99 percent down" (hearing of May 7, 1975, App. Vol. II, 100). Like Dr. Henderson, he had not observed in the last five to six years anyone being denied the right to register on account of race (*Id.* App. Vol. II, 107).

Further, Mr. Henry J. Kirksey, one of the lead plaintiffs in this case and the *Kirksey* board of supervisors redistricting case, also testified at the May 7, 1975 hearing (hearing of May 7, 1975, App. Vol. II, 114). Mr. Kirksey testified that he had voted in nearly every election in Hinds County since 1961 and had encountered no problems in participating in the political processes (*Id.* App. Vol. II, 124-125). Additionally, Mr. Kirksey, who was a black candidate for state senator for Hinds County in 1971, testified that he garnered 10,000 votes on a campaign expenditure of only $85.00, which amount he received two days prior to the election. (*Id.* App. Vol. II, 117).

Plaintiffs and intervenor attempt to litigate a 1976 case in a 1960 atmosphere, and in so doing they attempt

[7] Plaintiffs incorporated into this case the record in *Kirksey* v. *Board of Supervisors of Hinds County, Mississippi,* 402 F.Supp. 658, *aff'd* 528 F.2d 536 (5th Cir. 1976) (awaiting decision on rehearing *en banc*) (Plaintiffs Br. 39, fn. 67).

to give a distorted view of the present situation. Black citizens today enjoy full and equal access to the political processes of the State and are effectively participating in the political processes electing candidates of their choice, both black and white. Plaintiffs' witnesses were unable to satisfactorily explain why white candidates in several races received an overwhelming majority of the votes in predominantly black districts (App. Vol. II, 55-74).[8] Neither could plaintiffs' witnesses satisfactorily explain why black candidates were elected in areas where they were not in the majority (App. Vol. II, 102).[9]

The finding of the district court in the case *sub judice* that blacks in Mississippi enjoy full participation in the political processes is mirrored in *Kirksey* v. *Board of Supervisors of Hinds County, supra,* 402 F.Supp. 658. This decision involved the redistricting of Hinds County, Mississippi—the State's largest county—and was affirmed by the Court of Appeals for the Fifth Circuit. It is presently pending, awaiting decision after rehearing *en banc.* United States District Court Judge Walter L. Nixon, Jr., in reviewing the same evidence presented to the lower court in the case *sub judice,* made the following extensive findings:

> One fact which this Court deems significant however, in again reviewing this evidence, is that the vast majority of what this Court considers the

[8] *See also,* Intervenor Br. 44, fn. 49, where intervenor notes that a black candidate ran and lost in House District 28, which is 61.1% black voting age population.

[9] Reverend Rims Barber testifying for plaintiffs at the May 7, 1975 hearing stated that in one significant instance a black candidate won by a majority vote in an area where blacks constituted only 10-15 percent of the total population (App. Vol. II, 102).

more severe allegations of racial discrimination occurred a number of years ago. 402 F.Supp. at 671.

* * *

There is absolutely no evidence in this record that any person has been denied the right to register or to vote because of his race since the enactment of the Voting Rights Act of 1965.

* * *

The school system of Hinds County and the City of Jackson have been operating under Court order since the mid-1960's and the effects of the operation of a dual school system in Hinds County prior to that time have long since diminished or disappeared.

* * *

Subsequent to [*Love* v. *McGee*],[10] however, we do not find any actions or non-actions on the part of white elected officials evidencing racial discrimination or a lack of responsiveness on their part to the economic, social or political interest of the black community.

* * *

On the contrary, this Court has witnessed over the past seven years a willingness on the part of Hinds County officials to seek equitable solutions to racial problems. 402 F.Supp. at 672.

In affirming the *Kirksey* county redistricting decision, the Court of Appeals for the Fifth Circuit significantly pointed out, "The [District] Court's findings of fact are extensive and are in the main not disputed by plaintiffs." 528 F.2d 536, 537-538. Further, the Fifth Circuit noted at footnote 6:

> Plaintiffs' factual attack is limited mainly if not entirely, to one on ultimate facts or legal conclusions of the district court. 528 F.2d at 538.

[10] 297 F. Supp. 1314 (S.D. Miss. 1968).

Finding the political processes completely open, the district court in *Kirksey* v. *Board of Supervisors of Hinds County, supra,* 402 F.Supp. at 672, concluded:

> This Court does not find that any of the electoral laws presently in effect in Hinds County or this State operate to make it more difficult for blacks to equally participate in the electoral process.

The district court's finding in *Kirksey, supra,* are reflected in the findings of the case *sub judice* and aptly place this case in its proper context:

> There is a point in time when past instances or examples of racial discrimination become remote —a time when a past history becomes a remote history. That time has arrived for Hinds County. The mistakes of the early 1960's and prior to that time do not in this Court's opinion have any significant effect on the nomination and election of Hinds County officials in 1975. 402 F.Supp. at 673.

Perhaps the most telling examples of the absence of lingering effects of the past are revealed by the Federal Observers Report filed with the district court January 26, 1976 (Submission of the United States Pursuant to October 24, 1975 Court Order) (App. Vol. I, 28). This report contained all election irregularities observed by federal officials dispatched to Mississippi for the 1975 quadrennial elections. The district court described the contents of the report:

> We requested a detailed report from the Attorney General as to any observed interference with the right of black citizens to participate in the 1975 elections. Nothing was reported beyond some disputes as to whether an individual was registered to vote in the precinct where he was offering to vote, whether he was registered at all, and such

like. We observe that the Department of Justice has initiated no prosecutions for alleged violations of federally guaranteed voting rights in 1975 (App. Vol. II, 225).

Further, the district court observed that no instances of interference with the right to vote in Mississppi were reported by federal officials dispatched to observe the 1976 Presidential and Congressional elections (App. Vol. III, 225). Significantly, the district court observed, "the press has uniformly reported that an unusually heavy turn-out of black voters produced the Presidential victory in Mississippi" (App. Vol. III, 225).

Clearly, the record is devoid of any evidence that blacks in Mississippi encounter any difficulty in participating in the political processes at all levels, plaintiffs' and intervenor's speculations and conjectures notwithstanding.

2. *The Mississippi Legislature Has Been and Is Responsive to the Needs of All Citizens of the State, Be They Black or White*

The district court determined that plaintiffs had failed to demonstrate that legislators were unresponsive to the needs of the black citizens of the State. *Connor* v. *Waller, supra,* 396 F.Supp. at 1325. In fact, the record demonstrates affirmatively that the legislature has been and is responsive to the needs of the black citizens of the State (e.g. funding such programs as free public education, welfare, health, adult education, vocational education—Supp. App. 108a) and the district court so found (App. Vol. III, 225). Under the 1975 court-ordered plan 30 representatives and 14 senators were elected from districts having black population majority. Additionally, 46 representatives and 13 senators were elected in 1975 from districts having black population percentages from between 36-50 percent. It would be most unrealistic to conclude that legislators at least from these areas would not be responsive to the black interests. In *McGill* v. *Gadsen County Commission, supra,* 535 F.2d 277, the court of appeals for the Fifth Circuit upheld an at-large voting scheme in Gadsen County, Florida where 49.36 percent of the voters were black. In addressing the issue of responsiveness of elected officials, the court of appeals concluded: "indeed, given the significant number [of blacks] in the County, an elected official (whether black or white) would have to be responsive to black interests in order to be reelected." *Id.* at 281.

3. *History of Multi-member Districts and Apportionment in Mississippi*

Plaintiffs and intervenor contend that multi-member districts in Mississippi have been utilized to dilute the effectiveness of the voting strength of blacks in Mississippi. Citing historical treatises, plaintiffs attempt to show that multi-member districts historically were utilized to disfranchise blacks in Mississippi (Plaintiffs Br. 30-31). The district court found otherwise (App. Vol. II, 187). The "use of multi-member and multi-county districts in Mississippi does not have its origin in a desire to cancel out or minimize black voting strength." *Connor* v. *Waller, supra,* 396 F.Supp. at 1323. An act of the Congress of the United States, passed March 1, 1817, provided for 48 delegates to the Constitutional Convention, called to establish the new state of Mississippi. These delegates were all to be elected from multi-member districts (14 counties electing from 2 to 8 delegates) (App. Vol. II, 187).

As the district court articulated, "the Mississippi Legislative Apportionment Act of May 12, 1837, at a time, unhappily, when black people were held in slavery and could not vote, set up 24 multi-member districts for the election of Representatives" electing 2 to 4 members per district (App. Vol. II, 187). By 1846, the State had 22 multi-member districts electing 2 to 4 representatives. Eighteen of the senate districts were composed of the combination of 2 to 4 counties. *Hutchinson's Mississippi Code of 1848,* 377-378.

The Mississippi Constitutional Convention of 1868 "overwhelmingly controlled by the newly liberated slaves and their friends, most of them recent arrivals in Mississippi" (App. Vol. II, 187), apportioned legislative districts so that 29 counties elected 2 to 5 representatives each, from multi-member districts. Twenty-three of the 29 senate districts were comprised of 2 to 6 counties. Art. XI, Miss. Const. of 1869, Revised Code of 1871, 665.

Under the Constitution of 1890, multi-member districts were included for both the Houses and the Senate. Miss. Const. §§ 254, 255. Legislative reapportionment under the Constitution of 1890 remained in effect until 1962 when the Mississippi Constitution was amended in the wake of *Baker* v. *Carr,* 369 U.S. 186 (1962) (App. Vol. II, 188).[11]

Plaintiffs and intervenor erroneously contend that the Mississippi Constitutional Convention of 1890 deliberately gerrymandered the State's legislative districts in an effort to disfranchise blacks (Plaintiffs Br. 31-32; Intervenor Br. 8); citing in support, Kirwan, REVOLT OF THE REDNECKS and Kirwan, *Apportionment in the Mississippi Constitution of 1890,* 14 J. SOUTHERN HIST. 234 (1948). However, as Kirwan points out, under the 1890 apportioning:

> . . . if all made adults in every legislative district in Mississippi had voted, and if they had divided on race lines, Negroes would have returned 69 representatives and white 64.[12]

Likewise, under the 1890 apportioning provisions:

> In 1900, according to census figures, such a hypothetical vote would have returned the same number of whites and negroes as in 1890, and in 1910 there would have been 71 Negroes and 66 whites. Not until 1920 would shifts of population and creation of new counties have given the whites a majority of the legislators.[13]

Therefore, Kirwan undermines rather than underpins plaintiffs' and intervenor's contention.

The record in this case places beyond cavil that the court-structured 1975 reapportionment plan, although containing some small multi-member districts, was void of any racial dilutive effect upon the black vote in Mississippi.[14]

II. A COURT IN EXERCISING ITS REMEDIAL POWERS IS NOT REQUIRED NOR PERMITTED TO RACIALLY GERRYMANDER

A. Racial Gerrymandering for Any Purpose is Unconstitutional

The foundation of plaintiffs' and intervenor's challenge to the district court's 1975 and 1979 plans is

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[11] The subsequent reapportionment acts of the Mississippi Legislature were invalidated by the district court for containing excessive variances, and were not invalidated for any racial dilutive reasons.

[12] A. D. Kirwan, REVOLT OF THE REDNECKS, Ch. 7, p. 83 (1965).

[13] *Ibid.*

[14] The same is true of the 1979 district court plan.

premised on a single contention: the district court was under an affirmative duty to formulate a reapportionment plan that would guarantee the election of the maximum number of black legislators. Plaintiffs and intervenor seek nothing less than a racial gerrymander.[15] The question becomes: Is a racial gerrymander any less invidious when its purpose is to give a minority a proportion of the legislative representation?[16]

"This Court has, of course, rejected the proposition that members of a minority group have a federal right to be represented in legislative bodies in proportion to their number in the general population." *Beer* v. *United States,* 425 U.S. 130, 136, fn. 8 (1976). *Accord, Whitcomb* v. *Chavis,* supra, 403 U.S. at 149.

Justice Douglas in a dissent in *Wright* v. *Rockefeller*, 376 U.S. 52 (1964), discussed whether racial gerrymandering is permissible when the goal is to guarantee a minority representation. In *Wright,* the

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[15] Plaintiffs assert "color-conscious relief is necessary in redistricting cases because without a thorough understanding of the existence and location of minority voting strength, the trial court might well devise a remedy which would, in the words of the Fifth Circuit, 'accomplish the same dilution as the original invalid apportionment'" (Plaintiffs Br. 55). *See also,* Intervenor Br. at 54, 55. "Since racial discrimination is being remedied, the district court should have taken account of racial factors in the formulation of effective relief."

[16] "In shaping a remedy, such a proportional comparison provides a helpful 'starting point' . . . by providing a ready measurement of dilution, as well as a means of assuring that majority voting rights are not infringed" (Intervenor Br. 57). While plaintiffs expressly state that "blacks [are not] constitutionally entitled to a percentage of the population or vote in any particular district" (Plaintiff Br. 56), proportional representation is precisely what plaintiffs seek.

New York State Legislature enacted a statute which, in part, created four congressional districts in New York City. District lines were drawn so as to create one district that was predominantly white and one district that was predominantly black. White voters challenged the reapportionment as violating the Fourteenth and Fifteenth Amendments. Adam Clayton Powell, a black congressman from the predominantly black district, and several other New York County political leaders intervened on behalf of defendants. A three-judge federal district court dismissed the complaint for plaintiffs' failure to prove the reapportionment plan was motivated by racial consideration or was drawn on racial lines. *Id.* at 55. This Court affirmed, two Justices dissenting, upholding the district court's finding that the plaintiffs failed to sustain their burden of proof in showing that the reapportionment "was the product of a state contrivance to segregate on the basis of race or place of origin." 376 U.S. at 58.

Justice Douglas dissented on the ground that the evidence established a prima facie case of a legislative purpose to design the districts on racial grounds. *Wright* v. *Rockefeller, supra,* 376 U.S. at 61. Justice Douglas rejecting any racially motivated apportionment plans wrote:

> The intervenors are persons who apparently have a vested interest in control of the segregated Eighteenth District. They and the State seem to support this segregation not on the 'separate but equal' theory of *Plessy* v. *Ferguson* [163 U.S. 537 (1896)], but on another theory. This theory might be called the theory of 'separate but better off'—a theory that has been used before.
>
> * * *

> The fact that Negro political leaders find advantage in this nearly solid Negro and Puerto Rican district is irrelevant to our problem. Rotten boroughs were long a curse of democratic processes. Racial boroughs are also at war with democratic standards. 376 U.S. at 62 (footnote omitted).
>
> What we have in the Seventeenth and Eighteenth Districts in Manhatten is comparable to the Electoral Register System which Britain introduced to India. That system gave a separate constituency to Sikhs, Muslims, Anglo-Indians, Europeans, and Indian Christians. 376 U.S. at 63 (footnote omitted).

A report published in 1918 in defense of that system in India sounds strikingly familiar to the arguments set forth by plaintiffs. The report stated:

> Some persons hold that for a people, such as they deem those of India to be, so divided by race, religion and caste as to be unable to consider the interests of any but their own section, a system of communal electorates and class representation is not merely inevitable but is actually best. They maintain that it evokes and applies the principle of democracy over the widest range over which it is actually alive at all, by appealing to the instincts which are strongest; and that we must hope to develop the finer, which are also at present the weaker instincts by using the forces that really count. According to this theory communal representation is an inevitable and even a healthy stage in the development of a non-political people. 376 U.S. at 64.

Justice Douglas in concluding that such a system in the United States is unconstitutional, stated:

> Racial electoral registers, like religious ones, have no place in a society that honors the Lincoln tradition—of the people, by the people, for the people. Here the individual is important, not his race, his creed, or his color. The principle of equality is at war with the notion that District A must be represented by a Negro, as it is with the notion that District B must be represented by a Caucasian, District C by a Jew, District D by a Catholic, and so on. Cf. *Gray* v. *Sanders,* 372 U.S. 368, 379 (1963). The racial electoral register system weighs votes along one racial line more heavily than it does other votes. That system, by whatever name it is called, is a divisive force in a community, emphasizing differences between candidates and votes that are irrelevant in the constitutional sense. *Of course race, like religion, plays an important role in the choices which individual voters make from among various candidates. But government has no business designing electoral districts along racial or religious lines.* 376 U.S. at 66 (emphasis supplied; footnote omitted).
>
> * * *
>
> When racial or religious lines are drawn by the State, the multiracial, multireligious communities that our Constitution seeks to weld together as one become separatist; antagonisms that relate to race or to religion rather than to political issues are generated; communities seek not the best representative but the best racial or religious partisan. Since that system is at war with the democratic ideal, it should find no footing here.
>
> Separate but equal and separate but better off have no more place in voting districts than they have in schools, parks, railroad terminals, or any other facility serving the public. 376 U.S. at 67.

Racial gerrymandering offends the Constitution equally whether it is used to guarantee or deny a racial group an individual representative. If the Equal Protection Clause of the Fourteenth Amendment allows

gerrymandering on behalf of a racial group, then arguably it permits similar gerrymandering on behalf of religious, ethnic, or some other identifiable group. Such intentional gerrymandering has never been sanctioned by this Court.[17] Justice Stevens dissenting in *Cousins* v. *City Council of Chicago,* 466 F.2d 830 (7th Cir. 1972), *cert. denied* 409 U.S. 893, stated:

> A constitutional requirement of proportional representation for all minority groups would not only be unworkable, but also undemocratic. The difficulty inherent in any attempt to define a group's entitlement to proportional representation would frustrate the formulation of the plan. But even if the groups could be categorized, the reasons why such voter classifications should be abjured in a democracy have been eloquently identified by Mr. Justice Douglas's description of certain electoral register systems. See 376 U.S. at 63-67. At the very least, it is doubtful that the Fourteenth Amendment would permit proportional representation of ethnic groups; it is certain, however, that it does not *require* such a result. 466 F.2d at 858 (emphasis in original, footnotes omitted).

Defendants contend that not only does the Fourteenth Amendment not *require* racial gerrymandering, but it does not *permit* racial gerrymandering under any circumstances. If blacks are *entitled* to proportional black representation, then likewise so are Jews,

[17] This Court affirmed without opinion in *Ferrell* v. *Hall,* 406 U.S. 939 (1972) a district court holding that the Oklahoma State Legislature was not required to gerrymander so as to create a legislative district in which blacks were in the clear majority. *Ferrell* v. *State of Oklahoma Ex. Rel. Hall,* 339 F.Supp. 73 (W.D. Okla. 1972). The district court held that, "[s]uch a color conscious approach to apportionment is but another form of racial segregation and is constitutionally impermissible." *Id.* at 83.

Catholics, Irish, Poles, Mexican-Americans, and numerous other distinct groups in the United States. The non-distinct group in any such gerrymandered district is in effect left without representation. In a country that has long prided itself as the "melting pot" of the world, such affirmative segregative action is impermissible.[18] Racial gerrymandering is thus under any circumstances unconstitutional.

B. Permissible Boundaries in Formulating a Court-Ordered Plan

Plaintiffs and intervenor contend that the district court in formulating a legislative reapportionment plan is prohibited from utilizing multi-member districts (Plaintiffs Br. 52; Intervenor Br. 28). As discussed more fully in defendant's opening brief (Defendants Br. 35-47), multi-member districts are permissible in a court-ordered plan. Where, as in Mississippi, a state has an established policy[19] of using multi-member districts, this Court has upheld reapportionment plans that contained multi-member districts. *See, Mahan* v. *Howell,* 410 U.S. 315 (1973); *Burns* v. *Richardson,* 384 U.S. 73 (1966). Multi-member districts have been subject to challenge where *large* multi-member districts were fashioned in court-ordered reapportionment plans,[20] where a court cre-

[18] "The Equal Protection Clause commands the elimination of racial barriers, not their creation in order to satisfy our theory as to how society ought to be organized." *DeFunis* v. *Odegaard,* 416 U.S. 312 (1974), Justice Douglas dissent at 342. *Accord, Hughes* v. *Superior Court of California,* 339 U.S. 460, 464 (1950).

[19] In Mississippi, multi-member districts have been used to sustain the State's 150-year policy of preserving the integrity of county boundaries.

[20] The *Connor* decisions—*Connor* v. *Johnson,* 402 U.S. 690 (1971); *Connor* v. *Williams,* 404 U.S. 549 (1972); and *Connor* v. *Waller,*

ated multi-member districts in the absence of a state policy preferring multi-member districts,[21] and where multi-member districts were designed or operated to minimize or cancel out the voting strength of racial or political elements of the voting population.[22]

Plaintiffs and intervenor allege that multi-member districts have operated in Mississippi to minimize the voting strength of blacks (Plaintiffs Br. 13; Intervenor Br. 36-37). The basis for this allegation is that blacks have not been elected in the State legislature in proportion to their makeup of the general population of Mississippi. But, as this Court has observed,

> . . . there must be more evidence than a simple disproportionality between the voting potential and the legislative seats won by a racial or political group. There must be evidence that the group has been denied access to the political process equal to the access of other groups. *Chapman* v. *Meier, supra,* 420 U.S. at 17.

Plaintiffs have failed to carry their burden of proof, *White* v. *Regester, supra,* 412 U.S. at 766, and demonstrate that they are presently denied access to the political processes.[23] Thus, the use in Mississippi of small multi-member districts is constitutionally proper.

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421 U.S. 656 (1975)—expressed disapproval of the large multi-member districts that existed in Hinds, Harrison and Jackson Counties. Multi-member districts existed in those counties electing five to twelve at-large representatives. *See,* Defendants Br. 36-42.

[21] *See, Chapman* v. *Meier,* 420 U.S. 1 (1975).

[22] *See, White* v. *Regester,* 412 U.S. 755 (1973).

[23] *See, supra,* pp. 11-19, for a discussion of the evidence regarding plaintiffs' access to the political processes.

Plaintiffs allege that the district court's 1979 plan for senate districts is unconstitutional for containing "excessively high variances" (Plaintiffs Br. 48). Plaintiffs contend that the court plan with a total variance of 16.5% is prima facie unconstitutional, and that therefore the district court should have accepted plaintiffs' Modified Henderson Plan—presented to the district court on October 8, 1976 (App.Vol.III, 182)—with a total variance of 13.66% (Plaintiffs Br. 50).[24] Plaintiffs object to Districts 32, 33, 34 and 35 as being malapportioned.[25] Those districts have a total variance of 11.6% (App.Vol.III, 122), although plaintiffs disagree with the court's calculations of the variances (Plaintiffs Br. 44). Plaintiffs do not object to any other house districts as being excessively malapportioned, although by the court's calculations there remains under the house plan a total variance of 19.3% (Districts 5 and 47, App.Vol.III, 119, 124) and by plaintiffs' calculations there remains a total variance of 27.4% (Districts 24 and 45, App.Vol.III, 253), again evidencing that plaintiffs' sole concern in this case is obtaining the maximum number of gerrymandered "safe" black districts.

In *Chapman* v. *Meier, supra,* 420 U.S. at 22, this Court stated that:

> Although each case must be evaluated on its own facts, and a particular population deviation from the ideal may be permissible in some cases but

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[24] The correctness of plaintiffs' calculations as to the variances in its Modified Henderson Plan is questionable since it is based on plaintiffs' estimates of precinct and beat populations. *See,* App. Vol. III, 264-265.

[25] Plaintiffs also object to House Districts 47, 53, 54, 55, 56, 88 and 89, but those objections are based on the alleged fractionalization of black population concentrations.

not in others, *Swann* v. *Adams,* 385 U.S. 440, 445 (1967), certain guidelines have been developed for determining compliance with the basic goal of one person-one vote.

This Court held in *Mahan* v. *Howell, supra,* 410 U.S. at 324-325, that state legislative reapportionment plans are not to be judged by the more stringent standards applicable to congressional reapportionment plans. Minor population deviations in state legislative reapportionment plans do not establish a prima facie constitutional violation. *See, Gaffney* v. *Cummings,* 412 U.S. 735 (1973) where a variance of 7.83% and *White* v. *Regester, supra,* 412 U.S. 755, where a variance of 9.9% were held not to establish prima facie constitutional violations. As variances grow larger, justifications based on legitimate considerations incident to the effectuation of a rational state policy may be required to sustain the validity of a reapportionment plan. *White* v. *Regester, supra,* 412 U.S. at 764.

The justification asserted by the district court for the variances was its desire to preserve the integrity of county boundaries (App.Vol.III, 118).[26] To have obtained smaller variances, the district court would have had to create a "labyrinthian mishmash of legislative districts, composed of hundreds of Balkanized areas scattered profusely throughout the State" (App. Vol.III, 99). Mississippi's 150-year-old policy of preserving the integrity of county boundaries was discussed in defendants' opening brief (Defendants Br. 33-35).

[26] In fact, the basis, in part, for defendants' appeal was the failure of the district court to have preserved the integrity of county boundaries *in toto.* The variances that appear in the 1975 court plan are the result of preserving the integrity of county boundaries.

Plaintiffs seek to impugn the state policy of preserving the integrity of county boundaries, arguing that counties have been *subdivided* and that multi-county single-member, multi-member, and floterial districts have been created by *combining* counties (Plaintiffs Br. 49). Plaintiffs confuse subdividing and combining counties with the *fracturing* of county boundaries. In fact, at the May 7, 1975 hearings, plaintiffs' attorney reluctantly conceded that they had been unable to find any instances in the history of Mississippi legislative districting where county lines were fractured (Supp.App. 41a). The policy of preserving the integrity of county boundaries has been held by this Court to be a rational one justifying population variances. *Mahan* v. *Howell, supra,* 410 U.S. at 329; *Abate* v. *Mundt,* 403 U.S. 182 (1971); *Reynolds* v. *Sims,* 377 U.S. 533 (1964). Conversely, defendants contend that the infirmity in the district court's permanent plan arises not from having failed to obtain smaller variances, but rather from the failure of the plan to adhere *in toto* to the State policy of preserving the integrity of county boundaries.

C. Evaluation of the Plans

Plaintiffs and intervenor proffered in 1975 three sets of permanent plans—the Valinsky, Kirksey and State Modified Plans.[27] These plans admittedly achieved a *de minimis* population deviation but were properly rejected by the district court. One reason given by the court for such rejection was that they were based on census enumeration districts which did not coincide

[27] Valinsky Plan (App. Vol. I, 325, 346); Kirksey Plan (App. Vol. I, 410, 419); State Modified Plan (App. Vol. II, 139). Plaintiffs and intervenor do not advocate before this Court these plans.

with voting precincts or beats (App. Vol. II, 193, 211). Further, these plans resulted in massive fractionalization of the counties and beats of the State. In rejecting these plans, the district court explained that elections in Mississippi have to be conducted by precinct, beat and county "else the entire procedure would be reduced to inoperable confusion" (App. Vol. II, 194). Mississippi maintains a system of permanent registration (App. Vol. II, 192). At long intervals boards of supervisors in the 82 counties sometimes order a complete new registration of voters to update the poll books. "The record shows instances in which [the Attorney General of the United States] has objected to such re-registrations because it would put the black voters to the inconvenience of registering again and might thus diminish the black vote" (App. Vol. II, 192). Further, since 1817, the counties have been divided into beats with several officials being elected from such beats individually. Voting precincts must be established within and coextensive with these 5 beats; otherwise, there would be no way of electing locally chosen officials (App. Vol. II, 192). The district court concluded that unless elections in this State were conducted by precinct, beat and county, it would be impossible to confine voter registration records to those entitled to vote for supervisor, school board member, justice of the peace, or constable in any particular beat, and it would be impossible to confine the vote on those officials to the beats they are being elected to serve (App. Vol. III, 193).

"The result is that a voting precinct must be wholly within the same Beat; precincts simply cannot straddle Beat lines" (App. Vol. II, 193). The problem presented by plaintiffs' and intervenor's plans is that they

are based on census enumeration districts which do not coincide with voting precincts (App. Vol. II, 194).

While the alternative plans submitted by plaintiffs and intervenor are unworkable, additionally they are unconstitutional as racial gerrymanders. The Valinsky Plan created 23 black voting age majority House Districts, and 7 black voting age majority Senate Districts. The Kirksey plan established 26 House Districts and 7 Senate Districts with black voting age population majorities (App. Vol. II, 244). The United States' State Modified Plan established 29 House Districts and 12 Senate Districts with black voting age population majorities (App. Vol. III, 15, 19).

Reviewing plaintiffs' and intervenor's plans, the district court concluded:

> Moreover, to a large extent we must say in kindly candor that the objective of these plans quite clearly is to *maximize* black voting strength wherever it may be found. These plans would fragment the eighty-two counties into several hundreds of small pieces tacked together in a fashion designed, wherever possible, to establish election districts with black majorities (App. Vol. II, 211) (Emphasis in original).

After the formulation of the 1975 court-ordered plan which eliminated all large multi-member districts, intervenor filed two sets of plans in response to the district court order of 1975 (App. Vol. III, 1-77). Intervenor contended that its Senate and House County Boundary Plans would not be in compliance with requirements of the Fifteenth Amendment of the United States Constitution (App. Vol. III, 13). Intervenor likewise did not urge the adoption of its Senate Restricted Fractionalized Plan stating that,

"it is not an acceptable alternative to the three plans now before this Court, and accordingly we advocate adoption of the Kirksey, Valinsky or State Modified Plan" (App. Vol. III, 23). Intervenor did, however, view its own House Restricted Fractionalized Plan (HRFP) as an acceptable alternative despite this plan containing 7 multi-member districts, 5 of which elected 2 representatives and 2 of which elected 3 representatives (App. Vol. III, 19). The HRFP plan created 27 black voting age majority districts electing 28 members (App. Vol. III, 19).

The plaintiffs filed on October 16, 1975, pursuant to the district court's order of July 11, 1975, additional plans for the permanent reapportionment of the Mississippi Legislature.[28] Plaintiffs did not advocate their County Boundary Plan since in their view "it would [be] inappropriate and unconstitutional for this Court to order these plans into effect in their present form, without change".[29]

In the district court's supplemental order of August 1, 1975, (App. Vol. II, 256), it instructed that the proposed permanent reapportionment plans be based officially on 1973 U. S. Census estimates. U. S. BUREAU OF THE CENSUS CURRENT POPULATION REPORTS: POPULATION ESTIMATES AND PROJECTIONS, "1973 Population and 1972 Per Capita Income Estimates for Counties and Incorporated Places in Mississippi", Series P25, No. 569 (June 1975). However, plaintiffs motioned the district court to modify its order of August 1, 1975, since the 1973 census data gave population statistics

[28] Plaintiffs' Submission of Permanent Legislative Reapportionment Plans, October 15, 1975 (App. Vol. I, 28).

[29] *Ibid.*

for only counties and incorporated places. The district court granted plaintiffs' motion (hearing of June 15, 1976).

On October 9, 1975, defendants filed with the district court their submission pursuant to order proposing that the district court utilize the 1975 legislative plan or in the alternative the 1975 court order plan (Supp. App. 89a).

After the formulation by the district court of its permanent reapportionment plans, plaintiffs sought to relitigate this case by offering still another plan for the Senate (referred to as the Modified Henderson Plan) as well as several alternative proposals for numerous House Districts (App. Vol. III, 160, 182). These alternatives are based on "ex parte" population estimates, which estimates were made by superimposing census enumeration districts over voting precincts which are not co-terminous (App. Vol. III, 252). The reliability of these estimates were never accepted by the district court, nor were they accepted by the Special Master (App. Vol. III, 263, 265, 267, 269, 271, 272).

Plaintiffs challenge the district court's senate plan contending it was based on 1975 election data and not 1970 census data (Plaintiffs Br. 4, 21). This is incorrect. Plaintiffs neglected to state that the Special Master did utilize 1970 U. S. Census data. The Special Master only used 1975 precinct election data in limited circumstances when necessary to determine precinct population, and even then such data was utilized in connection with known 1970 Census data for larger political subdivisions (App. Vol. III, 261-2). Of all the plans advocated by the parties, only the 1975 court plan is not based on population estimates.

III. REQUEST FOR SPECIAL ELECTIONS

Plaintiffs seek special elections in all majority black legislative districts contained in the district court's 1979 plan, except for House Districts 48, 49, 57, 64, 65 and 67 to be held as soon as practicable (Plaintiffs Br. 76). As plaintiffs state, "new House Districts 48, 49, 57, 64, 65 and 67 either already have black representation or are majority black single-member districts in the 1975 plan. Hence, there is no need for special elections in those districts" (Plaintiffs Br. 67).

At the outset, it should be remembered that defendants contend that the district court erred in ordering any special elections after finding no dilution because of resultant changes in black-white district ratios when comparing the districts of the 1979 plan with the corresponding districts of the 1975 plan.[30] However, here defendants address plaintiffs' and intervenor's request for additional special elections. For the sake of argument only, defendants will assume that plaintiffs have demonstrated dilution of black voting strength; that the district court has an affirmative duty to remedy such dilution by establishing districts which maximized black voting strength; and that the district court has a duty to give effect to its remedy by ordering special elections.

[30] Defendants reiterate that the present members of the Legislature were elected under the 1975 court plan, which the district court determined in their November 12, 1976 opinion to be a constitutionally valid plan. That plan has never been held by any court to be unconstitutional.

The district court properly refused to order special elections in any senate district with a black population majority since all such districts were created out of 1975 districts which had black population majorities (App. Vol. III, 226). For this reason, the district court likewise rejected plaintiffs' and intervenor's request for special elections in new house districts with black population majorities which were created out of 1975 districts which had black population majorities (App. Vol. III, 226-229).

As plaintiffs state, "[t]he District Court found that there were five 'newly created black majority districts, brought into existence where no black majority district previously existed.' Opinion of November 12, 1976 (App. Vol. III, 226)" (Plaintiffs Br. 62-63).

The district court refused to order special elections in two of the new black districts (Districts 52 and 81), since ordering special elections in those districts would require special elections in adjoining districts (App. Vol. III, 226-28). Plaintiffs contend that this justification totally fails to outweigh "the constitutional necessity of special election relief to remedy the unconstitutional dilution of black voting strength present in the prior discriminatory multi-member districts" (Plaintiffs Br. 64). Remarkably, plaintiffs argue that to avoid this problem the district court clearly could have "authorize[d] a slight increase in the House to meet constitutional requirements" (Plaintiffs Br. 64). While plaintiffs make this argument to this Court, they strongly resisted in the district court any such increase in the membership of the House. Plaintiffs contended that the district court's previous holding that it did not have such authority to increase the size

of the legislature was *res judicata.*[31] Also, plaintiffs submitted that:

> Any increase in the number of seats, for example, in the House of Representatives, would diminish black voting strength in that body (App. Vol. III, 200).

Plaintiffs' counsel advised the district court that each increase of black representatives without any change in the size of the membership, equals an increase of 0.819 percent, while each increase of black representatives with a corresponding change in the size of the House membership would represent a change of only 0.813 percent (App. Vol. III, 200). Apparently, plaintiffs were contending that any increase of the legislature by one seat and one black representative would be a dilution of 0.006 percent as compared to leaving the size of the House the same and having one more black representative.

Again, assuming for this discussion only, that dilution existed under the 1975 plan, it was clearly a proper exercise of the district court's equity powers to reject special election requests where it felt that black citizens had an effective vote in majority black districts or in districts with substantial black population. Likewise, it was a proper balance of equities to refuse to order special elections which would have a domino effect of requiring special elections in adjoining districts.

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[31] Plaintiffs submitted, "This holding was left undisturbed on appeal and thus is *res judicata*. We believe the Court at this time lacks the authority to depart from its prior ruling" (App. Vol. III, 200).

In *Lemon* v. *Kurtzman,* 411 U.S. 192 (1973), this Court characterized the nature and extent of a trial court's discretionary power in shaping equity decrees. This Court taught us that:

> In shaping equity decrees, the trial court is vested with broad discretionary power; appellate review is correspondingly narrow. *Swann* v. *Charlotte-Mecklenburg Board of Education,* 402 U.S. 1, 15, 27 n. 10 (1971). Moreover, in constitutional adjudication as elsewhere, equitable remedies are a special blend of what is necessary, what is fair, and what is workable. 411 U.S. at 200 (footnote omitted).

Continuing, this Court stressed that the practical realities must be considered:

> In equity, as nowhere else, courts eschew rigid absolutes and look to the practical realities and necessities inescapably involved in reconciling competing interests, notwithstanding that those interests have constitutional roots. 411 U.S. at 201.

Mid-term elections would unnecessarily disrupt the operation of an entire branch of Mississippi government. Special elections would require several of its members to again seek reelection, making it necessary to extend the next legislative session to allow for adjustments in committee assignments if new legislators were in fact elected. Special elections would necessarily require the expenditure of substantial county funds to compensate the election officials in each precinct involved and for other expenses incidental to holding elections. Further, the implementation of any plan based entirely on single-member districts would necessitate several time consuming administrative tasks (e.g. compiling new voting tests for the entire State,

formulating new election district lines, familiarizing the electorate with the new election districts, and the probability of reregistration of voters in many of the newly created legislative districts). *Sims* v. *Amos*, 336 F. Supp. 924 (M.D. Ala. 1972), *aff'd* 409 U.S. 942 (1972).

Plaintiffs and intervenor cite several cases in support of their request for special elections (Plaintiffs Br. 69; Intervenor Br. 96). These cases are inapplicable to the issue involved here. At most, some of these cases stand only for the proposition that federal courts have the power to order special elections under the most extraordinary circumstances. Defendants do not argue with this proposition but submit that the district court in the case *sub judice* did not abuse its discretion in refusing to order special elections as requested by the plaintiffs and intervenor.[32]

[32] In its request for special elections intervenor calls upon this Court to take into consideration its assertion that "the State has repeatedly failed to offer an acceptable plan which would have made a court-ordered plan, and special elections unnecessary" (Intervenor Br. 96). This misstatement completely overlooks the diligent and repeated efforts of the Mississippi Legislature to resolve this controversy. *See* Defendants Br. 10, 24, 25. It is intervenor's adamant refusal to scrutinize the 1975 Mississippi legislative plan under the *Beer* v. *United States*, 425 U.S. 130, rationale, in the manner and method dictated by this Court in *Georgia* v. *United States*, 411 U.S. 526, 540 (1973), that has made a court-ordered plan necessary. Intervenor's refusal to follow the clear dictates of this Court in regard to its Section 5 duties and responsibilities is generated by its blind desire to impose upon the State of Mississippi its own political philosophy (i.e. that multi-member districts are unconstitutional per se, and that legislative districts must be gerrymandered in order to maximize black voting strength and to create safe black districts).

IV. ATTORNEY FEES

Plaintiffs cannot realistically be said to be the prevailing parties in this litigation and, thus are not entitled to an award of attorneys' fees pursuant to the statutory provisions[33] and decisions of this Court[34] relied upon by them.

The decisions of this Court and the statutes enacted by Congress upon which plaintiffs rely as bases for the awarding of attorneys' fees are inapplicable to this case. *Newman* v. *Piggie Park Enterprises, Inc.*, 390 U.S. 400 (1968); *Bradley* v. *Richmond School Board*, 416 U.S. 696, 711 (1974); and, *Wallace* v. *House*, 425 U.S. 947 (1976), are not pertinent to the question of whether the attorneys' fees can be awarded against funds of the State. The question of the circumstances under which a monetary judgment can be awarded against State funds is controlled by *Edelman* v. *Jordan*, 415 U.S. 651 (1974), and *Fitzpatrick* v. *Bitzer*, —— U.S. ——, 96 S.Ct. 2666 (1976).

In *Bitzer, supra*, this Court held that the immunity of the state to a monetary judgment could be abrogated by "express congressional authority" to sue a state or a state government. —— U.S. at ——, 96 S.Ct. 2672. The statutes relied upon by plaintiffs to justify the award of attorneys' fees against State funds, Section 402 of the 1975 amendments to the Voting Rights Act of 1965, 89 Stat. 404, 42 U.S.C.

[33] Section 402 of the 1975 amendments to the Voting Rights Act of 1965, 89 Stat. 404, 42 U.S.C. § 1973*l*(e); the Civil Rights Attorney's Fees Awards Act of 1976, P.L. 94-559, 90 Stat. 2461.

[34] *Newman* v. *Piggie Park Enterprises, Inc.*, 390 U.S. 400 (1968); *Bradley* v. *Richmond School Board*, 416 U.S. 696, 711 (1974); and *Wallace* v. *House*, 425 U.S. 94 (1976).

§ 1973*l*(e) and the Civil Rights Attorneys' Fees Award Act of 1976, P.L. 94-559, 90 Stat. 2641, do not meet the standards and criteria stated in *Bitzer*.

This Court held in *Bitzer, supra,* that Congress has the constitutional authority, pursuant to the power vested in it by § 5 of the Fourteenth Amendment to enforce the provisions of the amendment by appropriate legislation, to provide that persons might bring suit in the Federal Courts against states or state agencies, and to receive awards for back pay and attorneys' fees in appropriate cases. The statute under consideration in *Bitzer* was Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e, *et seq.* As amended by Congress in 1972, this statute provides in clear, explicit and unambiguous language that the United States District Courts shall have jurisdiction of suits brought against states alleging a violation of rights granted and secured by said Title VII. *See, Bitzer,* —— U.S at ——, fn. 2, 96 S.Ct. at 2668, fn. 2.

Thus, it is clear that Title VII of the Civil Rights Act of 1964, *as amended,* is a jurisdictional statute which provides that states and state agencies may be sued for damages in Federal Courts on account of discrimination in employment, and the Federal Courts are thereby vested with jurisdiction to award such money judgment for damages and attorneys' fees. *See* 42 U.S.C. §§ 2000e-5 (g) and (k).

Unlike the relevant provisions of Title VII of the Civil Rights Act of 1964, the 1975 Amendments to the Voting Rights Act and the Civil Rights Attorney's Fee Award Act of 1976 do not provide for the abrogation of the state's immunity to suit or judgment. In short, these acts fail the "*Bitzer* test." These acts obviously do not contain the "express congressional authority" which the *Bitzer* court held to be a necessary prerequisite to monetary recovery against a state.

Of critical importance here is that the Acts do not amend the definition of "person" found in 42 U.S.C. § 1983 to cover states. It is well settled that states or state agencies are not "persons" under § 1983, *Monroe* v. *Pape,* 365 U.S. 167 (1961), *City of Kenosha* v. *Bruno,* 412 U.S. 507 (1973), and therefore, are not subject to suit and an award of attorney fees pursuant to that statute. Nor do the Acts by their own terms make states, state governments, or state agencies amenable to suit or judgment. If the Acts were interpreted to make the State of Mississippi subject to monetary judgment, serious Eleventh Amendment issues would be raised, because the strictures of that Amendment bar any suit "commenced *or prosecuted* against one of the United States." U.S. Const. Amend. XI (Emphasis supplied).

The award of attorneys' fees is barred by the Eleventh Amendment to the Constitution, relevant decisions of this Court interpreting that Amendment, and the failure to join an indispensable party defendant, the State of Mississippi.

The complaint in this case was filed against certain officials of the State of Mississippi in their respective official capacities (App. Vol. I, 37-39) At various stages in this and related litigation, numerous persons were substituted as parties defendant in their official capacities pursuant to Rule 25(d) of the Federal Rules of Civil Procedure (App. Vol. I, 17, docket entry of 4-17-73).

This Court has held that an effort to obtain a judgment against State officials sued in their official capacities constituted a suit against a State, and is barred by the Eleventh Amendment. *Ex Parte Ayers,* 123 U.S. 433, 487-492 (1887); *Great Northern Ins. Co.* v. *Read,* 322 U.S. 47, 50-53 (1944); *Ford Co.* v. *Dept. of Treasury,* 323 U.S. 459, 462-464 (1945); *Kennecott Copper Corp.* v. *Tax Comm.* 327 U.S. 573, 576-577 (1946).

Having established that any award of attorneys' fees will be paid from funds of the State of Mississippi, we address the question of the effect of the failure to join the State of Mississippi as a party to this action. This Court has made it clear that courts will not adjudicate the rights, duties, liabilities, and obligations of a state when the state is not a party to the proceedings. *Durfee* v. *Duke,* 375 U.S. 106, 115 (1963); *Arkansas* v. *Tennessee,* 246 U.S. 158, 176 (1918); and *Western Union Co.* v. *Pennsylvania,* 368 U.S. 71, 75 (1961).

As a corolary to this principle, this Court has held that the State is an indispensable party to an action seeking to recover money from a state treasury. *Christian* v. *Atlantic and North Carolina Railroad Co.,* 133 U.S. 233, 241, 243-244 (1890); *Belknap* v. *Schild,* 161 U.S. 11, 18 (1896).

This Court has interpreted new Rule 19 of the Federal Rules of Civil Procedure dealing with parties, and synthesized the provisions of Rule 19 with the line of decisions relating to necessary and indispensable parties. *Provident Bank* v. *Patterson,* 390 U.S. 102 (1968). In *Provident Bank and Trust Co.,* this Court made it plain that the line of cases beginning with *Shields* v. *Barrow,* 17 How. 130 dealing with necessary

and indispensable parties is still the law, and that Rule 19 is to be used as a guide in interpreting the principles enunciated by *Shields* and its progeny in specific cases.

The jurisdiction to determine who are necessary or indispensable parties in classes of litigation is vested solely within the Judicial Branch of government of the United States. Any effort by Congress to determine by legislation who shall be necessary or indispensable parties to litigation would run afoul of the principle of separation of powers. Recently, this Court reemphasized that the judicial power of the United States cannot be shared with the Executive Branch. *United States* v. *Nixon,* 418 U.S. 683, 701 (1974). By the same token, the judicial power of the United States cannot be shared with the Legislative Branch, as this Court has held in *United States* v. *Romana,* 382 U.S. 136 (1965).

CONCLUSION

For the foregoing reasons, the judgment of the district court should be reversed and the case remanded with instructions to adopt the 1975 court plan as the permanent plan, or in the alternative to formulate a reapportionment plan which preserves the integrity of county boundaries. Moreover, plaintiffs' request for attorney fees should be denied.

Respectfully submitted,

A. F. SUMMER
Attorney General
State of Mississippi
GILES W. BRYANT
Special Assistant Attorney General
WILLIAM A. ALLAIN
Special Counsel
Post Office Box 220
Jackson, Mississippi 39205
601/354-7130

JERRIS LEONARD
THOMAS A. KAROL
Special Counsel
1747 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
202/872-1095

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IN THE

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OCTOBER TERM, 1976

Nos. 76-777, 76-933, 76-934, and 76-935

PEGGY J. CONNOR, ET AL.,
Appellants

v.

CLIFF FINCH, GOVERNOR OF MISSISSIPPI, ET AL.

On Appeals from the United States District Court for the Southern District of Mississippi

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REPLY BRIEF FOR PRIVATE APPELLANTS, PEGGY J. CONNOR, ET AL.

FRANK R. PARKER
THOMAS J. GINGER
Lawyers' Committee for
Civil Rights Under Law
Post Office Box 1971
Jackson, Mississippi 39205
(601) 948-5400

ROBERT A. MURPHY
ELIZABETH R. RINDSKOPF
WILLIAM E. CALDWELL
Lawyers' Committee for
Civil Rights Under Law
733 Fifteenth Street, N.W.
Washington, D.C. 20005
(202) 628-6700

Attorneys for Private Appellants, Peggy J. Connor, et al.

February 21, 1977

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TABLE OF CONTENTS

	Page
INTRODUCTION	1
I. THE DISTRICT COURT WAS REQUIRED TO ORDER SINGLE-MEMBER DISTRICTS IN ITS PERMANENT REAPPORTIONMENT PLAN BECAUSE IN COURT-ORDERED REAPPORTIONMENT PLANS SINGLE-MEMBER DISTRICTS ARE TO BE PREFERRED ABSENT UNUSUAL CIRCUMSTANCES	4
II. MISSISSIPPI'S PRESENT PREFERENCE FOR MULTI-MEMBER DISTRICTS AND AT-LARGE VOTING IS ROOTED IN RACIAL DISCRIMINATION	9
III. DEFENDANTS' OBJECTIONS TO THE DISTRICT COURT'S PLAN ARE UNTIMELY AND THE MULTI-MEMBER REAPPORTIONMENT PLANS FAVORED BY THE DEFENDANTS UNCONSTITUTIONALLY MINIMIZE AND CANCEL OUT BLACK VOTING STRENGTH	15
IV. BECAUSE THE DISTRICT COURT'S TEMPORARY 1975 REAPPORTIONMENT PLAN WAS AN INVALID PLAN, SPECIAL ELECTIONS ARE REQUIRED	22
Appendix A. The Status of Multi-Member Districting in Ten Southern States	32

TABLE OF AUTHORITIES

Cases — Page

Allen v. *State Board of Elections*, 393 U.S. 544 (1969) 13
Buckley v. *Hoff*, 234 F. Supp. 191 (D.Vt. 1964) (3-judge court), *modified and aff'd sub nom. Parsons* v. *Buckley*, 379 U.S. 359 (1965) 27
Bussie v. *Governor of Louisiana*, 333 F. Supp. 452 (E.D. La. 1971), *modified and aff'd*, 457 F.2d 796 (5th Cir. 1972), *vac'd and remanded on other grounds sub nom. Taylor* v. *McKeithen*, 407 U.S. 191 (1972) 10
Chapman v. *Meier*, 420 U.S. 1 (1975) 5, 6, 7, 9, 25
Chapman v. *Meier*, 372 F. Supp. 371 (D. N.D. 1974) (3-judge court), *rev'd*, 420 U.S. 1 (1975) .. 6
Connor v. *Johnson*, 265 F. Supp. 492 (S.D. Miss. 1967) (3-judge court) 4
Connor v. *Johnson*, 330 F. Supp. 506 (S.D. Miss. 1971) (3-judge court) *vacated sub nom. Connor* v. *Williams*, 404 U.S. 549 (1972) 4, 7, 21
Connor v. *Johnson*, 402 U.S. 690 (1971) 5, 7
Connor v. *Waller*, 396 F. Supp. 1308 (S.D. Miss. 1975) (3-judge court), *rev'd*, 421 U.S. 656 (1975) 21
Connor v. *Waller*, 421 U.S. 656 (1975) 18, 25
Connor v. *Williams*, 404 U.S. 549 (1972) 5, 7, 21
East Carroll Parish School Board v. *Marshall*, 424 U.S. 636 (1976) 3, 6, 7, 11
Georgia v. *United States*, 411 U.S. 526 (1973) 10
Graves v. *Barnes*, 343 F. Supp. 704 (W.D. Tex. 1972) (3-judge court), *aff'd sub nom. White* v. *Regester*, 412 U.S. 755 (1973) 10
Graves v. *Barnes*, 378 F. Supp. 640 (W.D. Tex. 1974) (3-judge court) *vac'd on suggestion of mootness sub nom. White* v. *Regester*, 422 U.S. 935 (1975) 10
Harper v. *Levi*, 520 F.2d 53 (D.C. Cir. 1975) 10
Hughes v. *WMCA, Inc.*, 379 U.S. 694 (1965) 29
Kilgarlin v. *Hill*, 386 U.S. 120 (1967) 11

TABLE OF AUTHORITIES—Continued

Page

Lucas v. *Colorado General Assembly*, 377 U.S. 713 (1964) 9
Mahan v. *Howell*, 410 U.S. 315 (1973) 5
Mann v. *Davis*, 238 F. Supp. 458 (E.D. Va. 1964) (3-judge court), *aff'd mem.*, 379 U.S. 694 (1965) 29
Morris v. *Gressett*, No. 75-1583, *probable juris. noted*, Dec. 6, 1976 10
Moss v. *Burkhart*, 220 F. Supp. 149 (W.D. Okla. 1963) (3-judge court), *aff'd sub nom. Williams* v. *Moss*, 378 U.S. 558 (1964) 29
Parsons v. *Buckley*, 379 U.S. 359 (1965) 29
Reynolds v. *Sims*, 377 U.S. 533 (1964) 4
Reynolds v. *State Election Board*, 233 F. Supp. 323 (W.D. Okla. 1964) (3-judge court) 28
Schaefer v. *Thomson*, 251 F. Supp. 450 (D.Wyo. 1965) (3-judge court), *aff'd mem. sub nom. Harrison* v. *Schaefer*, 383 U.S. 269 (1966) 28, 29
Sims v. *Amos*, 336 F. Supp. 924 (M.D. Ala. 1972) (3-judge court), *aff'd*, 409 U.S. 942 (1972) 10
Skolnick v. *Illinois State Electoral Board*, 307 F. Supp. 691 (N.D. Ill. 1969) (3-judge court) 28
Smith v. *Paris*, 257 F. Supp. 901 (M.D. Ala. 1966), *modified and aff'd*, 386 F.2d 979 (5th Cir. 1967) .. 27
Stewart v. *Waller*, 404 F. Supp. 206 (N.D. Miss. 1975) (3-judge court) 12
Swann v. *Adams*, 383 U.S. 210 (1966) 26
Swann v. *Adams*, 258 F. Supp. 819 (S.D. Fla. 1965) (3-judge court), *rev'd*, 385 U.S. 440 (1967) 26, 27
Swann v. *Adams*, 263 F. Supp. 225 (S.D. Fla. 1967) (3-judge court) 27
Taylor v. *McKeithen*, 407 U.S. 191 (1972) 11
Turner v. *McKeithen*, 490 F.2d 191 (5th Cir. 1973) 11
Untied States v. *Daniel*, filed August 3, 1961, S.D. Miss. 12
United States v. *Lynd*, filed July 5, 1961, S.D. Miss. 12

TABLE OF AUTHORITIES—Continued

	Page
United States v. *Ramsey*, filed July 6, 1961, S.D. Miss.	12
United States v. *Wood*, filed August 5, 1961, S.D. Miss.	12
Village of Arlington Heights v. *Metropolitan Housing Dev. Corp.*, No. 75-616, decided January 11, 1977	22, 25
Washington v. *Davis*, 426 U.S. 229 (1976)	22, 25
Whitcomb v. *Chavis*, 403 U.S. 124 (1971)	19
White v. *Regester*, 412 U.S. 755 (1973)	4, 19, 20
Wright v. *Rockefeller*, 376 U.S. 52 (1964)	22, 25
Zimmer v. *McKeithen*, 485 F.2d 1297 (5th Cir. 1973) (*en banc*), *aff'd sub nom. East Carroll Parish School Bd.* v. *Marshall*, 424 U.S. 636 (1976)	7, 11

Statutes

42 United States Code

§ 1971(a)	12
§ 1973c	5, 21

Mississippi Code Annotated

§ 23-3-69 (1972)	20
§ 2870 (1956 Recomp)	12, 13
§ 3110 (1956 Recomp)	20
§ 6271-03.5 (1956 Recomp)	14
Miss. Laws, 1962, ch. 537	12
Miss. Laws, 1966, ch. 290	13
Miss. Laws, 1966, chs. 404, 428, 431	14

Other Authorities

Banzhaf, *Multi-Member Electoral Districts—Do They Violate the "One Man, One Vote" Principle*, 75 Yale L.J. 1309 (1966)	9
Carpeneti, *Legislative Apportionment: Multi-Member Districts and Fair Representation*, 120 U.Pa. L. Rev. 666 (1966)	9

TABLE OF AUTHORITIES—Continued

	Page
Dixon, R., DEMOCRATIC REPRESENTATION: REAPPORTIONMENT IN LAW AND POLITICS (1968)	11
Hearings on the Extension of the Voting Rights Act of 1965 Before the Subcommittee on Constitutional Rights of the Senate Comm. on the Judiciary, 94th Cong. 1st Sess. (1975)	10, 14
Hearings on the Voting Rights Act of 1965 (S. 1564) Before the Senate Comm. on the Judiciary, 89th Cong., 1st Sess., Part 2, (1965)	12
United States Commission on Civil Rights, POLITICAL PARTICIPATION (1968)	14
United States Commission on Civil Rights, THE VOTING RIGHTS ACT: TEN YEARS AFTER (1975)	10
United States Commission on Civil Rights, VOTING IN MISSISSIPPI (1965)	12

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Appellants

v.

CLIFF FINCH, GOVERNOR OF MISSISSIPPI, ET AL.

On Appeals from the United States District Court for the Southern District of Mississippi

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REPLY BRIEF FOR PRIVATE APPELLANTS, PEGGY J. CONNOR, ET AL.

INTRODUCTION

The state official defendants in their brief contend that "traditional state policy" (Brief for State Parties, p. 30) favors multi-member districts and maintaining the integrity of county boundaries in legisiative redistricting. They argue that although the District Court in its numerous decisions in this case fully recognized this state policy, the District Court abused its discretion in "brushing aside" (Br., p. 47) this traditional state policy in

forming single-member districts statewide which, in some instances, break county lines.

However, the alleged state policy which defendants purport to defend is not as strong as their assertions. Past legislative apportionments in Mississippi have subdivided counties to provide single-member and two-member districts in the House of Representatives and have crossed county lines to form multi-county districts composed of two or more counties.[1] Nevertheless, although past Mississippi legislative apportionments have generally preserved counties intact, the Mississippi Legislature has failed to enact a valid legislative reapportionment plan which meets Federal Constitutional and statutory requirements. The District Court therefore was required by the prior decisions of this Court in this and other cases to promulgate a court-ordered legislative reapportionment plan which provides single-member districts statewide.

The District Court fully recognized that past state apportionments have preserved the integrity of county boundaries, and therefore determined that "any single member legislative district has to be constructed primarily from counties, using beats [supervisors' districts] and precincts as necessary to approach or attain the required population norm" (419 F. Supp. 1072, 1074); "we have striven to preserve county identity as far as reasonably possible" (419 F. Supp. 1089, 1090). The population norm for a Senate district is 42,633 persons, and the population norm for a House district is 18,171 (*id.* at 1074). The District Court's Senate plan preserves 63 of Mississippi's 82 counties intact, and breaks up only 19 counties in the formation of single-member Senate districts (App., Vol. III, pp. 233-36, 280). However, because there are 39 counties in Mississippi with a popu-

[1] See Brief for Private Appellants, Peggy J. Connor, et al., pp. 49-50, Brief App. B.

lation of less than 18,171, and 43 counties with a population of more than 18,171 (Brief for the United States, p. 6), more counties must be broken up in the House plan. Nevertheless, the District Court's House plan does preserve 40 counties intact, and breaks up 42 (App., Vol. III, pp. 237-47, 280-82). In each instance in which a county is split up for a House district, the legislative district is defined by supervisors' districts, which form the basic unit of county government (419 F. Supp. at 1074), or by voting precincts.[2]

Despite the District Court's largely successful effort to promulgate a single-member redistricting plan which preserves the integrity of county boundaries, the defendants argue that the District Court's plan should have provided some multi-member districts in recognition of past state policy (Br., p. 31). This position is completely untenable because (1) when District Courts are forced to fashion reapportionment plans to supplant unconstitutional state legislation, single-member districts are to be preferred absent unusual circumstances, *East Carroll Parish School Board* v. *Marshall*, 424 U.S. 636, 639 (1976); (2) Mississippi's preference for multi-member districts and at-large voting is rooted in racial discrimination, and (3) the multi-member reapportionment plans favored by the defendants in this case unconstitutionally minimize and cancel out black voting strength.

[2] Maps showing the boundaries of the District Court's Senate and House districts are attached at the back of this Brief. In addition, we have attached maps showing the boundaries of the District Court's House districts in Washington and Warren Counties, with census enumeration districts in Greenville and Vicksburg shaded for racial percentages, to illustrate our objections to those districts (Brief for Private Appellants, pp. 43-45).

I. THE DISTRICT COURT WAS REQUIRED TO ORDER SINGLE-MEMBER DISTRICTS IN ITS PERMANENT REAPPORTIONMENT PLAN BECAUSE IN COURT-ORDERED REAPPORTIONMENT PLANS SINGLE-MEMBER DISTRICTS ARE TO BE PREFERRED ABSENT UNUSUAL CIRCUMSTANCES.

When a state legislature enacts a reapportionment plan, some multi-member districts are permitted unless (1) the plan fails to provide substantial equality of population among the districts, *Reynolds* v. *Sims*, 377 U.S. 533, 579 (1964), or (2) the multi-member districts unconstitutionally minimize or cancel out minority voting strength, *White* v. *Regester*, 412 U.S. 755, 765 (1973). While "legislative reapportionment is primarily a matter for legislative consideration and determination," judicial relief is required "when a legislature fails to reapportion according to federal constitutional requisites after having had an adequate opportunity to do so." *Reynolds*, *supra*, at 586. Here, the Mississippi Legislature over a period of 15 years in six separate attempts at reapportionment has failed to enact a valid legislative reapportionment plan which meets both the *Reynolds* one-person, one-vote standards and the racial nondiscrimination requirements of the Voting Rights Act of 1965.[3] The

[3] The 1962 legislative plan, approved by the voters in 1963, was unconstitutionally malapportioned. *Connor* v. *Johnson*, 256 F. Supp. 962 (S.D. Miss. 1966). No appeal was taken by the defendants. The 1966 plan enacted by the Legislature in special session also was unconstitutionally malapportioned, *Connor* v. *Johnson*, 265 F. Supp. 492 (S.D. Miss. 1967), and no appeal was taken by the defendants. The 1971 plan enacted by the Legislature was unconstitutionally malapportioned, *Connor* v. *Johnson*, 330 F. Supp. 506 (S.D. Miss. 1971), *vacated on other grounds sub nom. Connor* v. *Williams*, 404 U.S. 549 (1972), and the state defendants failed to appeal. The two plans passed by the Legislature in 1973 were superseded by the Legislature's 1975 plan which was objected to by the United States Attorney General under the Voting Rights Act (Brief for Private Appellants, p. 15), and no action was filed

Mississippi Legislature having defaulted in its Federal constitutional and statutory responsibilities, legislative reapportionment then became the responsibility of the District Court.

In this case and other cases, this Court in the exercise of its supervisory power over District Courts[4] has developed different standards regarding the use of multi-member districts in court-ordered legislative reapportionment plans. Because of the "practical weaknesses inherent in such schemes," *Chapman* v. *Meier*, 420 U.S. 1, 15, and their potential for racial discrimination, *id.* at 16-18, this Court has

> "frequently reaffirmed the rule that when United States district courts are put to the task of fashioning reapportionment plans to supplant concededly invalid state legislation, single-member districts are to be preferred absent unusual circumstances. *Chapman* v. *Meier*, 420 U.S. 1, 17-19 (1975); *Mahan* v. *Howell*, 410 U.S. 315, 333 (1973); *Connor* v. *Williams*, 404 U.S. 549, 551 (1972); *Connor* v. *Johnson* [402 U.S. 690] at 692." *East Carroll Parish School Board* v. *Marshall*, 424 U.S. 636, 639 (1976).

As the decisions of the District Court here demonstrate, 419 F. Supp. 1072, 1089, no special or unusual circumstances in this case dictate the use of multi-member districts.[5] Thus, in shaping remedial relief the District Court here did not abuse its discretion in ordering a

in the U.S. District Court for the District of Columbia challenging that determination as allowed by 42 U.S.C. § 1973c.

[4] *Chapman* v. *Meier*, 420 U.S. 1, 18 (1975).

[5] In the only case in which such an unusual circumstance has been found, *Mahan* v. *Howell*, 410 U.S. 315, 333 (1973), the District Court was held to have acted within its discretion in establishing a single multi-member district as an interim remedy to alleviate substantial underrepresentation of military personnel in an impending election. No such situation was presented here.

single-member district reapportionment plan for both houses of the Mississippi Legislature.

Defendants argue that the rule against employment of multi-member districts in court-ordered reapportionment plans is not applicable here, and—without discussing this Court's recent *East Carroll Parish* decision—argue that under *Chapman*, *Mahan*, and the *Connor* cases the rule is to be applied only

> "where *large* multi-member districts were created; where the court *imposed* multi-member districts on states that previously did not use multi-member districts; and where multi-member districts had the purpose or effect of minimizing or cancelling the voting strength of racial or political elements." Br., p. 31 (emphasis in original).

Defendants' argument completely overlooks this Court's *East Carroll Parish* decision and is based upon a misreading of the other cases upon which defendants rely.

First, contrary to defendants' contentions (Br., pp. 36-39), the rule against court-ordered multi-member districts is not confined to "large" multi-member districts, but applies to *all* multi-member districts in court-ordered plans. In *Chapman* v. *Meier*, 420 U.S. 1 (1975), this Court applied the rule to reverse a District Court decision providing for five multi-member districts electing only two (District 29), three (District 32), four (Districts 5 and 18), and five (District 21) senators. *Chapman* v. *Meier*, 372 F. Supp. 371, 375 (D.N.D. 1974) (three-judge court), *rev'd*, 420 U.S. 1 (1975). In *Mahan* v. *Howell*, 410 U.S. 315 (1973), this Court applied the rule to require that one multi-member district which combined three single-member senatorial districts into one multi-member district for the election of three senators had to be justified by unusual circumstances (*id.* at 329-33). In *East Carroll Parish*, *supra*, this Court affirmed a Court of Appeals decision striking down at-large, multi-member voting in a Louisiana parish with a population of only 12,884 persons. *Zimmer* v. *McKeithen*, 485 F.2d 1297, 1301 (5th Cir. 1973) (*en banc*), *aff'd sub nom. East Carroll Parish School Board* v. *Marshall*, *supra*.

In the 1971 and 1972 decisions in this case, *Connor* v. *Johnson*, 402 U.S. 690, 692 (1971); *Connor* v. *Williams*, 404 U.S. 549, 551 (1972), this Court held that in court-ordered plans "single-member districts are preferable to large multi-member districts as a general matter" in response to the District Court's determination in 1971 that it would be "ideal" if Hinds, Harrison, and Jackson Counties, which elected one-fifth of the membership of both houses of the Mississippi Legislature, could be subdivided into single-member districts. The District Court had retained jurisdiction to explore the feasibility of single-member districting those counties. *Connor* v. *Johnson*, 330 F. Supp. 506, 519 (S.D. Miss. 1971). Thus, the precise language of the Court in the *Connor* decisions was confined to the facts and determinations of the District Court in the 1971 appeal, and in light of the Court's subsequent decisions cannot be given any broader meaning.

Second, the application of the rule is not strictly limited to cases in which single-member districts are dictated by state policy. In the 1971 appeal in this case, the Court held that in court-ordered plans "single-member districts are preferable * * * as a general matter," despite what defendants characterize as "Mississippi's long-standing policy" (Br., p. 47) favoring multi-member districts. In *East Carroll Parish* the Louisiana Legislature enacted enabling legislation providing for at-large election of police jurors and school board members[6] and at-large,

[6] The Louisiana legislation was objected to by the United States Attorney General under Section 5 of the Voting Rights Act of 1965 for racial discrimination. 424 U.S. at 637, n. 2.

multi-member voting was the expressed preference of the local officials, whose plan the District Court adopted. Yet despite the preference of the legislature and the police jury for multi-member districts, this Court nevertheless applied the blanket rule against multi-member districts in court-ordered plans "absent unusual circumstances" and held that "the District Court abused its discretion in not initially ordering a single-member reapportionment plan" (*id.* at 639-40).

True, in *Chapman* v. *Meier*, *supra*, the imposition of multi-member senate districts by the District Court contravened state policy, but the reasons announced by the Court for preferring single-member districts in court-ordered plans were not limited to the requirements of state policy in that case. District Courts "should refrain from imposing [multi-member districts] upon a State," this Court held in *Chapman*, *supra*, at 19, because "there are practical weaknesses inherent in such schemes" (*id.* at 15) which reach beyond the question of state policy:

> "First, as the number of legislative seats within the district increases, the difficulty for the voter in making intelligent choices among candidates also increases. * * * Ballots tend to become unwieldy, confusing, and too lengthy to allow thoughtful consideration. Second, when candidates are elected at large, residents of particular areas within the district may feel that they have no representative specially responsible to them. * * * Third, it is possible that bloc voting by delegates from a multimember district may result in undue representation of residents of these districts relative to voters in singlemember districts. * * * Criticism of multimember districts has been frequent and widespread." 420 U.S. at 15-16.

The fact that "a State . . . always has employed single-member districts" only provides a "special reason to follow the Connor rule . . ." *Id.* at 19.

Third, contrary to defendants' argument (Br., pp. 31, 36, 43-47), this Court has not limited the rule against multi-member districts to cases in which such districts had the purpose or effect of diluting black voting strength. No claim of racial dilution was made in *Chapman*, *supra*, 420 U.S. at 19, but the Court held that the absence of claims of racial discrimination was irrelevant:

> "The fact that no allegation of minority group discrimination is raised by appellants here does not make Connor inapplicable." *Id.* at 19.

Accordingly, the District Court's decision to promulgate a permanent court-ordered legislative reapportionment plan for both houses of the Mississippi Legislature providing only single-member districts not only does not constitute an abuse of discretion, but was required by the decisions of this Court in this and other cases.

II. MISSISSIPPI'S PRESENT PREFERENCE FOR MULTI-MEMBER DISTRICTS AND AT-LARGE VOTING IS ROOTED IN RACIAL DISCRIMINATION.

Because of the inequities and racially discriminatory features of multi-member districts,[7] the number of legislative reapportionments employing multi-member districts has substantially decreased throughout the South.[8] Multi-member legislative redistricting plans have been struck

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[7] See *Chapman* v. *Meier*, *supra*, at 15-19; *Lucas* v. *Colorado General Assembly*, 377 U.S. 713, 731, n. 21 (1964); Carpeneti, *Legislative Apportionment: Multi-member Districts and Fair Representation*, 120 U. Pa. L. Rev. 666 (1972); Banzhaf, *Multi-Member Electoral Districts--Do They Violate the "One Man, One Vote" Principle*, 75 Yale L. J. 1309 (1966).

[8] Both houses of the state legislatures of Alabama, Louisiana, Tennessee, and Texas are now elected from single-member districts statewide. In addition, the state senates of Arkansas, Georgia and Virginia have single-member districts statewide, and the state house of South Carolina has single-member districts statewide. See Appendix A, *infra*.

down by the courts for, *inter alia*, invidious dilution of minority voting strength in Texas,[9] Alabama,[10] and Louisiana,[11] and have been objected to by the Attorney General under Section 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c, for racial discrimination in Georgia,[12] South Carolina,[13] Louisiana, and Virginia.[14] In most Southern states in which multi-member districts have been struck down, the number of black legislators has increased dramatically: in Alabama the number of black legislators increased from 2 to 15, in Louisiana from 1 to 10 (from 1 to 8 in the 1972 elections), in Georgia from 14 to 22 (from 14 to 20 in the House), and in South Carolina from 4 to 13.[15]

Yet, the Mississippi state officials in their brief continue to cling to this out-moded, inequitable and discriminatory form of districting. The history of efforts of the Mississippi Legislature to thwart the election of black

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[9] *Graves* v. *Barnes*, 343 F. Supp. 704 (W.D. Tex. 1972) (three-judge court), *aff'd sub nom. White* v. *Regester*, 412 U.S. 755 (1973); *Graves* v. *Barnes*, 378 F. Supp. 640 (W.D. Tex. 1974) (three-judge court) *vac'd on suggestion of mootness sub nom. White* v. *Regester*, 422 U.S. 935 (1975).

[10] *Sims* v. *Amos*, 336 F. Supp. 924, 936 (M.D. Ala. 1972) (three-judge court), *aff'd mem.*, 409 U.S. 942 (1972).

[11] *Bussie* v. *Governor of Louisiana*, 333 F. Supp. 452, 454 (E.D. La. 1971), *modif'd and aff'd*, 457 F.2d 796 (5th Cir. 1972), *vac'd and remanded on other grounds sub nom. Taylor* v. *McKeithen*, 407 U.S. 191 (1972).

[12] *Georgia* v. *United States*, 411 U.S. 526 (1973).

[13] *Harper* v. *Levi*, 520 F.2d 53 (D.C. Cir. 1975); *Morris* v. *Gressette*, No. 75-1583, probable juris. noted, Dec. 6, 1976.

[14] *Hearings on the Extension of the Voting Rights Act of 1965 Before the Subcommittee on Constitutional Rights of the Senate Comm. on the Judiciary*, 94th Cong. 1st Sess. 598-600 (1975).

[15] Brief for Private Appellants, p. 29, n. 35; United States Commission on Civil Rights, THE VOTING RIGHTS ACT: TEN YEARS AFTER 214, 234-35, 241 (1975).

candidates to public office,[16] we submit, indicates that Mississippi's preference for multi-member districts and at-large legislative voting is "rooted in racial discrimination," *Taylor* v. *McKeithen*, 407 U.S. 191, 194, n. 3 (1972).

Multi-member legislative districts are the functional equivalent of at-large voting at the county and municipal level.[17] Under both multi-member districts and at-large voting, two or more officials are elected from a single election district in at-large voting. Both forms allow "the majority to defeat the minority on all fronts," *Kilgarlin* v. *Hill*, 386 U.S. 120, 126 (Douglas, J., dissenting), and offer the prospect that 51 percent of the vote can elect 100 percent of the representation.[18]

Since the first lawsuits filed by the Department of Justice challenging racial discrimination in voter registration and since the enactment by Congress of the Voting Rights Act of 1965, the Mississippi Legislature has continually enacted racially discriminatory legislation providing for at-large voting of public officials. In each instance, such legislation has either been held unconstitutional by the courts because of a racially discriminatory purpose and effect, or has been objected to by the United States Attorney General under Section 5 of the Voting Rights Act for racial discrimination.

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[16] See Brief for Private Appellants, Brief App. C.

[17] *East Carroll Parish School Board* v. *Marshall*, 424 U.S. 636 (1976). In *Turner* v. *McKeithen*, 490 F.2d 191, 194, n. 8 (5th Cir. 1973), the Fifth Circuit (per Brown, C.J.) adopted Judge Clark's comment that "multi-member districts—* * * in logic of analysis are merely one form of at-large voting * * *" *Zimmer* v. *McKeithen*, 485 F.2d 1297, 1315 (5th Cir. 1973) (dissent), *aff'd sub nom. East Carroll Parish School Board* v. *Marshall*, *supra*.

[18] R. Dixon, DEMOCRATIC REPRESENTATION: REAPPORTIONMENT IN LAW AND POLITICS 17 (1968).

In 1962, after the first Justice Department voter registration suits were filed,[19] the Mississippi Legislature amended state municipal election law [20] to require all municipal aldermen to be elected at-large.[21] The author of the 1962 legislation in urging its enactment asserted that "this is needed to maintain our southern way of life." *Stewart* v. *Waller*, 404 F. Supp. 206, 213 (N.D. Miss. 1975) (three-judge court). A three-judge District Court, noting Mississippi's "long history of statutory racial segregation and discrimination . . . with consequent token participation by blacks in the political processes of the state," 404 F. Supp. at 214, held the 1962 act "violative of the Fourteenth and Fifteenth Amendments to the Constitution of the United States as a purposeful device conceived and operated to further racial discrimination in the voting process" (404 F. Supp. at 215) and to "thwart the election of minority candidates to the office of alderman" (*id.* at 214).

Subsequently, in 1966, the Mississippi Legislature amended Miss. Code Ann. § 2870 (1956 Recomp.) to en-

[19] See Brief for the United States, Brief Appendix A, Racially Discriminatory Voting Practices in Mississippi, pp. 31a-32a, 35a-38a; United States Commission on Civil Rights, VOTING IN MISSISSIPPI 52-57 (1965). The first Justice Department lawsuits filed in Mississippi pursuant to 42 U.S.C. § 1971(a) were: *United States* v. *Lynd*, filed July 5, 1961, S.D. Miss.; *United States* v. *Ramsey*, filed July 6, 1961, S.D. Miss.; *United States* v. *Daniel*, filed August 3, 1961, S.D. Miss.; and *United States* v. *Wood*, filed August 5, 1961, S.D. Miss. For a description of this litigation, see *Hearings on the Voting Rights Act of 1965 (S. 1564) Before the Senate Comm. on the Judiciary*, 89th Cong., 1st Sess., Part 2, pp. 1175 ff. (1965).

[20] Miss. Laws, 1962, ch. 537.

[21] Prior to 1962, state law applicable to code charter municipalities required cities with population over 10,000 to elect six aldermen by wards and one at-large, and allowed municipalities under 10,000 to choose to elect all five aldermen at-large or four by wards and one at-large. *Stewart* v. *Waller*, 404 F. Supp. 206, 209 (N.D. Miss. 1975) (three-judge court).

able county boards of supervisors to switch from election from each of the five supervisors' districts to at-large, countywide voting for all five supervisors.[22] The legislation was challenged for lack of clearance under Federal review provisions of Section 5 of the Voting Rights Act of 1965, and this Court, ruling that the election law change was within the submission requirements of Section 5, held:

> "No. 25 involves a change from district to at-large voting for county supervisors. The right to vote can be affected by a dilution of voting power as well as by an absolute prohibition on casting a ballot. See Reynolds v. Sims, 377 U.S. 533, 555 (1964). Voters who are members of a racial minority might well be in the majority in one district, but in a decided minority in the county as a whole. This type of change could therefore nullify their ability to elect the candidate of their choice just as would prohibiting some of them from voting." *Allen* v. *State Board of Elections*, 393 U.S. 544, 569 (1969).

The change subsequently was submitted for Section 5 review, and the Attorney General objected to the change, along with two other Mississippi election law changes, for the reason that "these amendments had as their purpose and have had as their effect the denial and the abridgment of the right to vote on account of race or color." [23]

Subsequently, in 1968 and 1971 the Mississippi Legislature reenacted the objected to amendment to Miss. Code Ann. § 2870 (1956 Recomp.); the 1968 legislation was never submitted under Section 5, and the 1971 legis-

[22] Miss. Laws, 1966, ch. 290.

[23] Section 5 objection letter from Jerris Leonard, Assistant Attorney General, Civil Rights Division, to A. F. Summer, Attorney General of Mississippi, May 21, 1969; Hearing of May 7, 1975, Ex. P-1; Hearing of Feb. 7, 1975, Exs. P-1, P-2, Request for Admissions Ex. 20.

lation also was objected to by the Attorney General for racial discrimination.[24]

Also in 1966 the Mississippi Legislature passed three statutes providing for at-large election of members of county boards of education, previously elected from supervisors' districts.[25] These also were objected to by the Attorney General under Section 5 of the Voting Rights Act.[26] In 1975 the Mississippi Legislature in its legislative reapportionment plan provided for numerous multi-member districts, and the Attorney General in detailing the reasons for his Section 5 objection referred to the discriminatory effects of these multi-member districts.[27]

This prior history of the racially discriminatory efforts of the Mississippi Legislature to provide for at-large voting of city officials—to preclude the election of black aldermen from majority black wards—and for the at-large election of county supervisors and other county officials—to preclude the election of black county officials from majority black beats—clearly compels the conclusion that Mississippi's preference for at-large election of state legislators—to preclude the election of black legislators from majority black single-member districts—taken together with an extensive past history of exclusion of blacks from the political processes, is "rooted in racial discrimination."

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[24] *Hearings, supra* note 14, at 599.

[25] Miss. Laws, 1966, ch. 404, codified in Miss. Code Ann. § 6271-03.5 (1956 Recomp.) (Supp. 1966); Miss. Laws, 1966, ch. 428; Miss. Laws, 1966, ch. 431. See United States Commission on Civil Rights, POLITICAL PARTICIPATION 22 (1968).

[26] *Hearings, supra* note 14, at 599.

[27] See Brief for Private Appellants, p. 15; Memorandum for the United States as Amicus Curiae, *Connor* v. *Waller*, No. A968, filed June 3, 1975.

III. DEFENDANTS' OBJECTIONS TO THE DISTRICT COURT'S PLAN ARE UNTIMELY AND THE MULTI-MEMBER REAPPORTIONMENT PLANS FAVORED BY THE DEFENDANTS UNCONSTITUTIONALLY MINIMIZE AND CANCEL OUT BLACK VOTING STRENGTH.

Defendants in their brief do not point to any plan presented in this record which would satisfy their objections to the District Court's plan. Rather, they simply state that the District Court could have fashioned a plan which "utilized small multi-member districts and single-member districts" (Br., p. 31), and request that the District Court's judgment be reversed and remanded "with instructions to formulate a reapportionment plan that preserves the integrity of county boundaries" (Br., p. 53)—although as we have pointed out above, the District Court's single-member redistricting plan does tend to preserve the integrity of county boundaries to the greatest extent possible.[28]

Defendants' objections to the District Court's single-member reapportionment plan are untenable and cannot be sustained, first, because their objections are untimely, and second, because the plans they prefer—on this record—are racially discriminatory and unconstitutionally dilute black voting strength measured by any standard.

At this late stage in the litigation, defendants should be precluded from raising objections to the District Court's plan because (1) at each stage of the litigation in which defendants were given an opportunity to present a new plan which met their requirements, they declined to do so, and (2) defendants failed to object to the Dis-

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[28] Of the plans in the record, only plaintiffs' Modified Henderson Senate County Boundary Plan (App. Vol. III, pp. 186-90) would have provided single-member districts and split up fewer counties (15, as opposed to 19 in the District Court's plan).

trict Court's final judgment and failed, after the judgment was announced, to present any alternative plans which would have met their specifications.

The District Court in its Order of July 11, 1975 announcing the temporary plan for the 1975 legislative elections only (App., Vol. III, p. 207) specifically directed the parties to file with the Court their proposals for the permanent reapportionment of the Mississippi Legislature. The District Court specifically directed:

> "It is further ordered, adjudged and decreed that within ninety days of this date, the parties hereto shall file with the Clerk of this Court plans for the permanent reapportionment of the Legislature.
>
> The first plan shall be for minimum practicable deviations from population norms without fracturing county boundaries. An alternative plan shall provide for minimum fracturing of county boundaries, in which no county shall be divided more than once, and no more than two fractured counties shall be placed in the same district. Any proposed fracture shall state if it is required to avoid dilution of black voting strength.
>
> The alternate plan shall adhere as nearly as possible to precinct and beat lines. Thirdly, the parties may submit plans of their own composition consistently with their view of the law. * * * All plans shall be accompanied by appropriate population data, calculations as to deviations from the norm, racial composition, etc." App., Vol. II, p. 237.[29]

[29] On August 1, 1975, the District Court ordered that all proposed permanent plans be based on 1973 Census estimates of population (App., Vol. II, p. 256). On August 24, 1976, after plaintiffs' and plaintiff-intervenor's plans were submitted, the District Court discarded these population statistics as unfeasible: "We cannot use the 1973 official population estimates because they do not include beats and precincts" (419 F. Supp. at 1077).

In response to this directive, both the plaintiffs[30] and the plaintiff-intervenor[31] filed proposals for the permanent apportionment of the legislature in accordance with the guidelines set out by the District Court. The defendants, in their response to this Order, filed no new plans. Instead, they simply reiterated their contentions that none of the prior legislative plans had been declared unconstitutional and stated:

> "In view of the foregoing, defendants hereby submit as their proposed reapportionment plan to be considered by the Court in the formulation of a 'permanent' court-ordered plan, the reapportionment plan as fashioned by this Court in 1971, as modified by the Legislature in 1975, which plan maintains the integrity of the counties of the State of Mississippi. Said plan is part of the record in this cause and is incorporated herein by reference. As an alternative plan, defendants hereby submit and incorporate by reference the reapportionment plan as created by this Court's order of July 11, 1975, which fractures only a minimum of county lines." Defendants' Submission Pursuant to Order, filed October 9, 1975, p. 6 (App., Vol. I, p. 27).

Defendants' Submission of October 9, 1975 makes clear that when they insist that only "large" multi-member districts should be subdivided, they mean only the multi-member districts in Hinds, Harrison, and Jackson Counties; and when they insist that the District Court should have implemented a plan which provided "small multi-member districts" which "preserve the integrity of county boundaries," they mean that the District Court should have ordered the 1975 legislatively-enacted plan—to which the Attorney General objected for racial discrimination—

[30] Plaintiffs' Submission of Permanent Legislative Reapportionment Plans, filed Oct. 15, 1975 (App., Vol. I, p. 28).

[31] Alternative Plans Submitted by the United States, filed Oct. 31, 1975 (App., Vol. III, pp. 1-77).

trict Court's final judgment and failed, after the judgment was announced, to present any alternative plans which would have met their specifications.

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[29] On August 1, 1975, the District Court ordered that all proposed permanent plans be based on 1978 Census estimates of population (App., Vol. II, p. 256). On August 24, 1976, after plaintiffs' and plaintiff-intervenor's plans were submitted, the District Court discarded these population statistics as unfeasible: "We cannot use the 1973 official population estimates because they do not include beats and precincts" (419 F. Supp. at 1077).

In response to this directive, both the plaintiffs[30] and the plaintiff-intervenor[31] filed proposals for the permanent apportionment of the legislature in accordance with the guidelines set out by the District Court. The defendants, in their response to this Order, filed no new plans. Instead, they simply reiterated their contentions that none of the prior legislative plans had been declared unconstitutional and stated:

> "In view of the foregoing, defendants hereby submit as their proposed reapportionment plan to be considered by the Court in the formulation of a 'permanent' court-ordered plan, the reapportionment plan as fashioned by this Court in 1971, as modified by the Legislature in 1975, which plan maintains the integrity of the counties of the State of Mississippi. Said plan is part of the record in this cause and is incorporated herein by reference. As an alternative plan, defendants hereby submit and incorporate by reference the reapportionment plan as created by this Court's order of July 11, 1975, which fractures only a minimum of county lines." Defendants' Submission Pursuant to Order, filed October 9, 1975, p. 6 (App., Vol. I, p. 27).

Defendants' Submission of October 9, 1975 makes clear that when they insist that only "large" multi-member districts should be subdivided, they mean only the multi-member districts in Hinds, Harrison, and Jackson Counties; and when they insist that the District Court should have implemented a plan which provided "small multi-member districts" which "preserve the integrity of county boundaries," they mean that the District Court should have ordered the 1975 legislatively-enacted plan—to which the Attorney General objected for racial discrimination—

[30] Plaintiffs' Submission of Permanent Legislative Reapportionment Plans, filed Oct. 15, 1975 (App., Vol. I, p. 28).

[31] Alternative Plans Submitted by the United States, filed Oct. 31, 1975 (App., Vol. III, pp. 1-77).

or the 1975 temporary court-ordered plan—which violated this Court's mandate in *Connor* v. *Waller*, 421 U.S. 656 (1975)—into effect as a permanent court-ordered plan.

As previously indicated, Section I *supra*, neither of these plans satisfy the requirements of this Court for court-ordered legislative reapportionment plans. Further, although it is not necessary to reach the question of whether these plans would have satisfied constitutional requirements for legislatively-enacted plans, both of these plans would have violated the constitutional standards for legislatively-enacted plans both for malapportionment [32] and for invidious dilution of black voting strength.

The District Court did not abuse its discretion in refusing to order permanent apportionment plans under which a majority of both houses of the Mississippi Legislature were elected from multi-member districts [33] and which employed multi-member districts which unconstitutionally minimized and cancelled out black voting strength. In the House plans, seven black majority counties were combined with more populous white majority counties to

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[32] See Brief for Private Appellants, pp. 13-14.

[33] *Id.*, pp. 9 n. 11, 12, 16-17. The renumbering of the floterial districts in the 1975 court-ordered plan gives the illusion of more single-member districts in the 1975 court plan (Defendants' Br., p. 29) than in the 1971 court plan (Defendants' Br., p. 21), when in fact only one multi-member Senate district (District 22, Hinds County) and only six multi-member House districts (District 3, Desoto and Marshall; District 28, Madison and Rankin; District 31, Hinds; District 43, Pearl River and Stone; District 45, Harrison; and District 46, Jackson and George) were subdivided into single-member districts for the 1975 plan (App., Vol. II, pp. 180-82, 195-96, 218-19). For example, in the 1975 plan, floterial District 1 (Alcorn, Benton, and Tippah, three representatives, Alcorn electing one, Benton and Tippah electing one, and one at-large) (330 F. Supp. at 512, 516) was renumbered: District 1, Alcorn, one representative; District 1A, Benton and Tippah, one representative; District 1B, Alcorn, Benton, and Tippah (Floater District), one representative (App., Vol. II, p. 230).

create district-wide white majorities.[34] In addition, substantial concentrations of black voting strength were submerged in countywide voting in white majority counties.[35] The uncontradicted testimony before the District Court indicated that, as to the 1975 plan enacted by the Legislature, because disproportionately fewer blacks were of voting age, were registered to vote, or were able to participate freely in the political process, black voters were able to elect candidates of their choice in only one House district.[36]

Similarly, in the Senate plans, eight black majority counties were combined with more populous white majority counties to create district-wide white majorities.[37] Substantial concentrations of black voting strength were similarly submerged in countywide voting.[38] Black voters were precluded from electing candidates of their choice in any of the Senate districts in the 1975 legislatively-enacted plan.[39]

While legislatively-enacted multi-member districts are not *per se* unconstitutional, *Whitcomb* v. *Chavis*, 403 U.S. 124 (1971), legislatively-enacted multi-member districts are unconstitutional when black voters have "had less opportunity than did other residents in the district to participate in the political processes and to elect legislators of their choice," *White* v. *Regester*, 412 U.S. 755,

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[34] See J.S., *Connor* v. *Waller*, 421 U.S. 656 (1975) (No. 74-1509), pp. 8-14, Brief App. D; App., Vol. II, pp. 239-51.

[35] *Id.*

[36] App., Vol. II, pp. 81-113; Hearing of May 7, 1975, Exs. P-30, P-31.

[37] J.S., *Connor* v. *Waller*, *supra*, pp. 8-14, Brief App. D; App., Vol. II, pp. 239-51.

[38] *Id.*

[39] App., Vol. II, pp. 81-113; Hearing of May 7, 1975, Exs. P-30, P-31.

766 (1973).[40] Plaintiffs have met their burden in this case of showing that through multi-member districts Mississippi black people have been denied equal access to the political process. In a state which is 36.8 percent black, only four blacks in this century have been elected to the 174-member Mississippi Legislature. Blacks have been excluded from equal participation in the electoral processes by Mississippi's racially discriminatory voter registration and poll tax requirements, and by oppressed social and economic conditions. Candidates favored by the black voters have been precluded from being elected in districts in which blacks do not constitute a voting majority by racial bloc voting by whites; by the majority vote requirement for party nomination, Miss. Code Ann. § 23-3-69 (1972); by the prohibition on single-shot voting, Miss. Code Ann. § 3110 (1956 Recomp.); and by the "post" or "place" requirement limiting candidates to a specified post on the ballot. Further, the almost all-white Mississippi Legislature has proven itself unresponsive to the needs and interests of the black community, and has even enacted racially discriminatory legislation designed to thwart the election of black candidates to public office.[41]

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[40] In *White* v. *Regester, supra,* this Court sustained plaintiffs' claim of dilution of minority voting strength on the basis of proof showing: (1) a past history of official racial discrimination in the state, affecting the right of blacks and Mexican-Americans to register and vote and participate in the democratic processes; (2) a majority vote requirement to win party nomination in party primaries; (3) a post or place requirement limiting legislative candidates to a particular post on the ballot; (4) a disproportionately low number of minority group members elected to legislative office; (5) discrimination in slating legislative candidates; (6) unresponsiveness of elected legislators to the interests of the minority groups and (7) relative socio-economic disadvantage of minority group members (412 U.S. at 766-69).

[41] Brief for Private Appellants, pp. 28-36, Brief App. C; Brief for the United States, Brief App. A. The testimony quoted at pp. 45-46 of defendants' brief refers to black people now being able to register and vote in Mississippi, not to the absence of any discrimination in the legislative election process, see App., Vol. II, pp. 108-10, 117-19, 125-26, Ex. P-34.

Defendants contend that since 1971, none of the court-ordered or legislatively-enacted reapportionment plans (which they prefer as permanent plans) have been declared unconstitutional (Br., p. 20), and in fact rely upon the District Court's 1975 decision sustaining the constitutionality of the Legislature's 1975 plan against plaintiffs' claims of racial discrimination (Br., p. 34). These contentions are entirely misplaced.

In 1971 the District Court ignored the racial dilution issues in its 1971 court-ordered plan.[42] Although the racial dilution issue was presented in the 1971 appeal,[43] this Court declined to decide the constitutionality of the District Court's 1971 plan pending proceedings to subdivide the multi-member districts in Hinds, Harrison, and Jackson Counties, *Connor* v. *Williams,* 404 U.S. 549 (1972). In 1975 the District Court's decision sustaining the constitutionality of the Legislature's 1975 plan was reversed by this Court, *Connor* v. *Waller,* 396 F. Supp. 1308, *rev'd,* 421 U.S. 656; and in ruling that the plan was subject to Section 5 submission requirements, the Court held that the District Court "erred in deciding the constitutional challenges to the Act based upon claims of racial discrimination," 421 U.S. at 656. Upon submission, the United States Attorney General objected to the Legislature's 1975 plan for racial discrimination, and that determination was never challenged in the United States District Court for the District of Columbia, 42 U.S.C. § 1973c.

Thus, prior to 1975, the districts first devised in the 1971 court-ordered plan were never held uncon-

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[42] The District Court indicated that it formulated the 1971 plan "in the hope of attaining, *as nearly as possible,* equality in population among the several districts, without regard to race * * *" (330 F. Supp. at 508).

[43] J.S., *Connor* v. *Williams,* 404 U.S. 549 (1972), pp. 7-13.

stitutional for racial dilution because the question was never reached. When the question was decided by the District Court in 1975, this Court reversed holding that it was improper for the District Court to have decided that issue in the absence of Section 5 submission.

On the basis of the proof presented in this case, whether judged by the standards applicable to court-ordered redistricting or legislatively-enacted redistricting, the plans preferred by the defendants are unconstitutional and invidiously minimize and cancel out black voting strength.

IV. BECAUSE THE DISTRICT COURT'S TEMPORARY 1975 REAPPORTIONMENT PLAN WAS AN INVALID PLAN, SPECIAL ELECTIONS ARE REQUIRED.

The defendants argue (Brief for State Parties, pp. 47-52) that the District Court erred in ordering any special elections, and that no special elections are required, because (1) the District Court did not find that its temporary 1975 plan unconstitutionally diluted black voting strength, and (2) in any event, since the private plaintiffs and the United States have not even attempted to demonstrate that the District Court in formulating its temporary 1975 plan was motivated by racial discrimination, plaintiffs have not met the burden of *Village of Arlington Heights* v. *Metropolitan Housing Dev. Corp.*, No. 75-616, decided January 11, 1977, *Washington* v. *Davis*, 426 U.S. 229 (1976), and *Wright* v. *Rockefeller*, 376 U.S. 52 (1964). These cases, defendants contend, require a showing of a discriminatory purpose on the part of the District Court before a constitutional violation in the temporary 1975 plan can be found (Br., pp. 51-52).

Defendants' first contention is erroneous for two reasons. First, the District Court in its Order of July 11, 1975 noted that there were racial dilution problems in its 1975 plan in instances in which black majority counties were joined with white majority counties to create districtwide white majorities, but concluded that time and available data did not permit single-member districting in those areas prior to the 1975 primary and general elections for legislative office.[44] Second, we have shown

[44] House District 14 (Bolivar County):

> "The Department of Justice says that this County could be divided into three single-member districts in such a fashion as to improve the chances of electing a black representative, but for lack of adequate data conforming to precinct lines this cannot now be done. The Court expects to give the division of Bolivar County further study for the permanent plan" (App., Vol. II, p. 216).

House District 15 (Issaquena and Washington Counties):

> "In the formulation of a permanent plan, with adequate data, this district should include some, if not all, single-member districts" (*id.*, p. 221).

House District 17 (Carroll and Leflore Counties):

> "The district has black voting age population of 50.1%. With appropriate data the district should be susceptible to division, reducing its three member status" (*id.*, p. 216).

House District 24 (Kemper and Lauderdale Counties):

> "Kemper County is 54.85% black and is combined in a four Representative district with Lauderdale, with one of the four being required to be a resident of Kemper. The size of this district must be reduced. The legislative district status of these two geographically isolated black counties [Kemper and Noxubee] was the subject of extended discussion in the informal court-counsel conference of July 7, 1975 * * * * No presently viable plan was suggested. * * * We have concluded that there are no presently viable answers to this peculiar situation, so we leave as it is, with top priority when we come to consider the permanent plan" (*id.*, p. 222).

House Districts 23 (Lowndes County); 23A (Oktibbeha and Noxubee Counties); 23B (Lowndes, Noxubee and Oktibbeha Counties, Floater district):

> "These [Noxubee and Kemper Counties] are the only two black majority counties in East Mississippi. On its South side Noxubee joins Kemper. On their East sides both counties join Alabama. * * * Noxubee County is now combined with Oktibbeha County for the election of a Senator and for the election

that the 1975 court-ordered plan was almost identical to the Mississippi Legislature's 1975 plan which was objected to by the Attorney General under the Voting Rights Act for racial discrimination,[45] and the overwhelming weight of the evidence in this case shows that the 1975 plan did in fact dilute black voting strength.[46]

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of two Representatives. As to the election of a Representative this is not satisfactory because Oktibbeha County has 28,752 people, twice that of Noxubee. Noxubee is 65.77% black, Oktibbeha is 65.21% white" (*id.*, pp. 221-22).

House District 30 (Claiborne and Warren):

"[Claiborne County has a] [b]lack population majority 4,986. * * * Claiborne is combined with Warren County, which has 41% black population. * * * Claiborne might be joined with some identifiable portion of Warren County for a single-member district. However, by order of a three-judge court in a reapportionment case, Warren County presently has no validly existing Supervisor Beats" (*id.*, p. 216).

[45] Brief for Private Appellants, pp. 15-16. The temporary 1975 court-ordered plan was identical to the 1975 Legislature's plan except that the District Court subdivided one multi-member Senate district and six multi-member House districts (one single-member House district also was slightly altered). See *supra*, note 33 .

[46] *Id.*, pp. 61-67. At the hearing held on June 20, 1975, plaintiffs elected to stand on the record made that the Legislature's 1975 plan was unconstitutional for both malapportionment and unconstitutional dilution of black voting strength (Supp. App., pp. 87a-88a). In addition to the extensive documentary evidence, the conclusion that the District Court's 1975 plan unconstitutionally diluted black voting strength is supported by the deposition testimony of Harold E. Sweeney, Jr. (App., Vol. I, pp. 71-116), Dr. James E. Loewen (App., Vol. I, pp. 117-154), Dr. Gordon G. Henderson (App., Vol. I, pp. 155-99), Asst. Attorney General J. Stanley Pottinger (App., Vol. I, pp. 200-220), Rims Barber (App., Vol. I, pp. 221-280), and Henry J. Kirksey (App., Vol. I, pp. 360-409), and by the trial testimony of Dr. Henderson (App., Vol. II, pp. 1-80), Mr. Barber (App., Vol. II, pp. 81-113), and Mr. Kirksey (App., Vol. II, pp. 114-27). Defendants presented no witnesses to contradict the testimony of these witnesses. See also, Plaintiffs' Motion to Alter or Amend Judgment, filed July 21, 1975 (App., Vol. II, pp. 239-51).

The defendants' contention that plaintiffs had the burden of proving discriminatory intent on the part of the District Court is likewise incorrect. This Court has never held the discriminatory purpose requirement applied by the Court in *Arlington Heights*, *Washington*, and *Wright* germane to a court-ordered reapportionment plan.[47] *Arlington Heights* and *Washington* involved challenges to allegedly discriminatory action by municipal officials, and *Wright* v. *Rockefeller* cited by defendants (Br., p. 52) involved a challenge to a Congressional redistricting statute enacted by a state legislature.

Moreover, the District Court itself recognized that its temporary 1975 plan was invalid under this Court's mandate in *Connor* v. *Waller*, 421 U.S. 656 (1975), by superseding it with the present permanent court-ordered plan providing single-member districts statewide.[48] It is precisely because the temporary 1975 plan is invalid as a permanent court-ordered reapportionment plan that special elections are required. Thus, the new plan is not merely an improvement upon prior plans (Defendants' Br., p. 48), but is the first plan promulgated by the District Court in this 12-year-old case which meets constitutional requirements for a court-ordered legislative reapportionment plan.

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[47] Indeed, in *Chapman* v. *Meier*, 420 U.S. 1 (1975), this Court held that "unless there are persuasive justifications, a court-ordered reapportionment plan of a state legislature must avoid use of multi-member districts, and, as well, must ordinarily achieve the goal of population equality with little more than de minimis variation" (*id.* at 26-27), regardless of the purpose or intent of the District Court.

[48] In promulgating its single-member plan, the District Court noted: "Yet, we have repeatedly been told that in the formulation of a court ordered legislative reapportionment plan single member districts must be used unless multiple member districts can be justified by unusual circumstances, *Chapman* v. *Meier, supra.*" 419 F. Supp. at 1075.

Members of both houses of the Mississippi Legislature were elected in 1975 to serve four-year terms. Thus, unless special elections are ordered, the members of the present Legislature elected under an invalid temporary plan will serve until their terms expire in January 1980. In numerous cases, none of which require a showing of discriminatory purpose on the part of the District Court, this Court and the lower Federal courts have been intolerant of any unnecessary delays in the effectuation of valid legislative reapportionment plans and of the perpetuation in office of legislators elected pursuant to an invalid plan.

In *Swann* v. *Adams*, 383 U.S. 210 (1966), the District Court held the Florida Legislature's 1965 reapportionment plan invalid for malapportionment, but approved the plan (with minor changes) on an interim basis and deferred any further action until after the adjournment of the 1967 legislative session. Legislative elections were scheduled for 1966. This Court held that the District Court erred in approving an invalid plan on an interim basis, and ordered speedy relief:

> "This litigation was commenced in 1962. The effect of the District Court's decision is to delay effectuation of a valid apportionment in Florida until at least 1969. While recognizing the desirability of permitting the Florida Legislature itself to determine the course of reapportionment, we find no warrant for perpetuating what all concede to be an unconstitutional apportionment for another three years.
>
> We reverse and remand to the District Court so that a valid reapportionment plan will be made effective for the 1966 elections." 383 U.S. at 211-12.

On remand, the legislature enacted a new plan in March 1966 which was approved by the District Court, 258 F. Supp. 819 (S.D. Fla. 1966) (three-judge court), and pursuant to which the 1966 legislative elections were

held. On appeal, this Court held the 1966 plan invalid for malapportionment and reversed the District Court's decision, 385 U.S. 440 (1967). On remand, the District Court replaced the invalid legislative plan with a court-ordered plan of its own and, to cure the defects of the invalid plan, ordered special statewide primary and general legislative elections for a one-year term of office to be held prior to the next regular session of the legislature scheduled to commence April 4, 1967. 263 F. Supp. 225 (S.D. Fla. 1967) (three-judge court).

In *Buckley* v. *Hoff*, 234 F. Supp. 191 (D. Vt. 1964) (three-judge court), *modified and aff'd sub nom. Parsons* v. *Buckley*, 379 U.S. 359 (1965), the District Court allowed the 1964 legislative primary and general elections to proceed under an invalid, malapportioned plan, but limited the 1965 legislative session to reapportionment, and the terms of office of legislators elected under the invalid plan to March 31, 1965. On appeal, this Court approved a stipulation agreed to by the parties which affirmed the District Court's judgment but modified paragraph 3 to, *inter alia*, remove the reapportionment restriction on the 1965 legislative session, allow for consideration of reapportionment by a constitutional convention, provide for a special election of a new state legislature under a valid plan by January, 1966, and extend the terms of office of legislators elected under the invalid plan only to July 1, 1965.

In *Smith* v. *Paris*, 257 F. Supp. 901 (M.D. Ala. 1966), *modified and aff'd*, 386 F.2d 979 (5th Cir. 1967), the District Court held unconstitutional a change from district to at-large, countywide voting for members of a county Democratic executive committee, but because the suit was not filed until the eve of the election, refused to void the election held under the invalid plan. On appeal, the Fifth Circuit affirmed the District Court's judgment, but shortened the terms of office of committee

members elected under the at-large plan to two years, holding, "There is no reason to delay beyond 1968 the relief to which the district court held the plaintiffs (appellants) entitled" (386 F.2d at 980).

Other decisions militate against delay once elections have already been held under an invalid plan. In *Schaefer* v. *Thomson*, 251 F. Supp. 450 (D. Wyo. 1965) (three-judge court), *aff'd mem. sub nom. Harrison* v. *Schaefer*, 383 U.S. 269 (1966), state senators were elected under an invalid reapportionment plan, and the District Court was compelled to order its own plan. Because 12 of the 25 senators had been elected to hold office until January 1969, the District Court shortened the senators' terms of office and ordered interim elections, holding:

> "Unequal representation in eight out of the seventeen new districts would continue until January 1969. This is an unnecessary delay, especially in view of the fact that we are sitting now to effect justice and to remedy the invidious discrimination in the Wyoming Senate. The inhabitants of the State of Wyoming have a federally guaranteed right to a constitutionally apportioned legislature in January 1967. We would be remiss in our duties were we to require them to wait until 1969 to enjoy equal representation in the Senate." 251 F. Supp. at 454.

In *Reynolds* v. *State Election Board*, 233 F. Supp. 323 (W.D. Okla. 1964) (three-judge court), the District Court set aside the legislative primary elections held under an invalid reapportionment plan, and ordered special primary elections, holding: "There is ample time and sufficient funds for the special elections. In these circumstances, we decline to withhold the immediately available remedy to which the plaintiffs are clearly entitled" (233 F. Supp. at 330). In *Skolnick* v. *Illinois State Electoral Board*, 307 F. Supp. 691 (N.D. Ill. 1969) (three-judge court), the District Court permitted the 1970 elections to

be held under an invalid temporary plan because the elections were too close to permit adequate corrective action, but abbreviated the terms of office of legislators elected under the invalid plan to two years, holding that "any term of office authorized under a plan which does not meet present constitutional standards should be as limited as possible. . ." (307 F. Supp. at 697).

Not to require any special elections at all, as defendants argue, would negate the effective action taken in these cases, sanction the election of an improperly constituted legislature elected under an invalid plan to a full term of office, and contradict the prior decisions of this Court repeatedly giving approval to special elections and abbreviated terms of office for legislators elected under invalid reapportionment plans. *Schaefer* v. *Thomson*, 251 F. Supp. 450 (D. Wyo. 1965) (three-judge court), *aff'd mem. sub nom. Harrison* v. *Schaefer*, 383 U.S. 269 (1966); *Parsons* v. *Buckley*, 379 U.S. 359 (1965); *Hughes* v. *WMCA, Inc.*, 379 U.S. 694 (1965); *Mann* v. *Davis*, 238 F. Supp. 458 (E.D. Va. 1964), *aff'd mem.*, 379 U.S. 694 (1965); *Moss* v. *Burkhart*, 220 F. Supp. 149 (W.D. Okla. 1963), *aff'd per curiam sub nom. Williams* v. *Moss*, 378 U.S. 558 (1964).

Because the District Court's 1975 plan was based on the Legislature's plan to which the Attorney General objected for racial discrimination, and because the numerous multi-member districts minimized and cancelled out black voting strength, plaintiffs urge the Court to direct special elections in the majority black Senate and House districts in the new single-member court-ordered plan (except for the six preexisting House districts with black voting majorities). This can be accomplished with a minimum of expense and disruption of the orderly processes of state government. As the District Court's plan now stands, we request special elections in only 22 (including the two already

ordered by the District Court) of the 122 single-member House districts,[49] and in only 14 of the 52 single-member Senate districts.[50] If plaintiffs' Modified Henderson Senate Plan (and Hinds County Census Tract Plan) is adopted, special elections would be required in only 15 of the 52 Senate districts.[51] If plaintiffs' proposed alternatives to the District Court's discriminatory House districts are adopted, only one additional special House election would be required.[52] These special elections should be held this year or, in any event, prior to the convening of the next regular session of the Mississippi Legislature in January 1978. This is the minimum special election relief necessary to remedy the deprivation of plaintiffs' rights through 10 years of dis-

[49] The single-member majority black House districts in the District Court's plan as presently constituted in which we request special elections are listed in plaintiffs' Application to Vacate Stay Entered by the District Court Pending Appeal, *Connor* v. *Finch*, No. 76-777 (No. A-421), pp. 15-30.

[50] The single-member majority black Senate districts in the District Court's plan as presently constituted in which we request special elections are listed in Plaintiffs' Motion to Alter and Amend Judgment, filed Sept. 20, 1976, App., Vol. III, p. 164.

[51] Brief for Private Appellants, p. 42. The racial composition of those districts is set out in App., Vol. III, pp. 186-90.

[52] App., Vol. III, pp. 193-94, 196. Three Washington County districts in the District Court's plan (Districts 32, 33, and 34) are majority black in population, but do not have black voting majorities. Under plaintiffs' proposed alternatives, the three districts would have black voting majorities. Similarly, the Adams County district in the District Court's plan (District 89) does not have a black voting majority, and under plaintiff-intervenor's proposed alternative would have a black voting majority. The one new majority black House district proposed in plaintiffs' alternatives is proposed District 54 in Warren County (App., Vol. III, p. 196), which is majority white under the District Court's plan (*id.*, p. 281).

criminatory multi-member districting under court-ordered plans.

Respectfully submitted,

FRANK R. PARKER
THOMAS J. GINGER
Lawyers' Committee for
Civil Rights Under Law
Post Office Box 1971
Jackson, Mississippi 39205
(601) 948-5400

ROBERT A. MURPHY
ELIZABETH R. RINDSKOPF
WILLIAM E. CALDWELL
Lawyers' Committee for
Civil Rights Under Law
733 Fifteenth Street, N.W.
Washington, D.C. 20005
(202) 628-6700

Attorneys for Private Appellants,
Peggy J. Connor, et al.

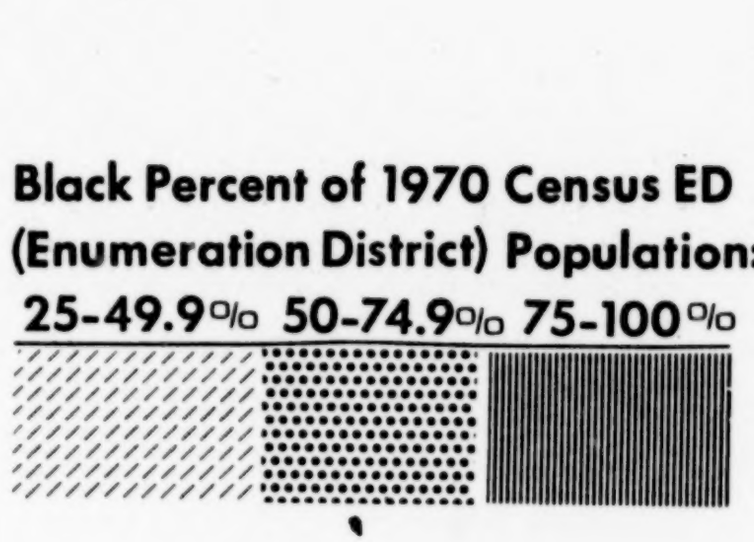
February 21, 1977

APPENDIX A

The Status of Multi-Member Districting in Ten Southern States.

State	State Senate		State House	
	Number of Districts	Number of Multi-Member Districts	Number of Districts	Number of Multi-Member Districts
Alabama	35	0	105	0
Arkansas	35	0	84	10
Florida	40	14	120	24
Georgia	56	0	105	16
Louisiana	39	0	105	0
North Carolina	27	18	45	35
South Carolina	16	13	124	0
Tennessee	33	0	99	0
Texas	31	0	150	0
Virginia	40	0	52	28

Sources: Council of State Governments, *Reapportionment in the Seventies* (1973); State codes of Alabama, Florida, Georgia, Louisiana, North Carolina, South Carolina, Tennessee, and Texas.



55-Yazoo County (part)

LEGEND

GENERAL HIGHWAY MAP
WARREN COUNTY
MISSISSIPPI

PREPARED BY
MISSISSIPPI STATE HIGHWAY DEPARTMENT
TRAFFIC AND PLANNING DIVISION
IN COOPERATION WITH THE
U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION

DATA OBTAINED FROM
TRAFFIC AND PLANNING SURVEY
AND
AERIAL PHOTOGRAPHS
1966

SCALE IN MILES

TRANSVERSE MERCATOR PROJECTION
1967

REPRODUCTION OR ALTERATION IN WHOLE OR IN PART WITHOUT WRITTEN PERMISSION OF THE MISSISSIPPI HIGHWAY COMMISSION IS PROHIBITED

BEAT LINES AS OF AUGUST, 1970

POLITICAL BOUNDARIES ARE SHOWN ACCORDING TO BEST AVAILABLE INFORMATION AND ARE SUBJECT TO CHANGE EXCEPT WHERE ESTABLISHED BY COURT DECISION.

GENERAL HIGHWAY MAP
WASHINGTON COUNTY
MISSISSIPPI

PREPARED BY
MISSISSIPPI STATE HIGHWAY DEPARTMENT
TRANSPORTATION PLANNING DIVISION

IN COOPERATION WITH THE
U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION

Inset A
T19N R8W

Inset B
T18N R7W

Inset C
T19N R8W

Inset D
T19N R8W

Inset E
T18N R7W

Inset F
T18N R7W

Inset G
T17N R8W

Inset H
T17N R8W

Inset J
T14N R8W

SCALE OF ENLARGEMENT IN MILES

MISSISSIPPI
ARKANSAS
LOUISIANA

32-Issaquena County (part) HJK

BOLIVAR COUNTY
CHICOT COUNTY
SUNFLOWER COUNTY
HUMPHREYS COUNTY
SHARKEY COUNTY
ISSAQUENA COUNTY

MISSISSIPPI
WASHINGTON COUNTY
ARKANSAS
CHICOT COUNTY

GREENVILLE
JELAND
DELTA EXPERIMENTAL FOREST
LEROY PERCY STATE PARK
YAZOO NATIONAL WATERFOWL REFUGE
HOLLANDALE

MISSISSIPPI RIVER
ARKANSAS RIVER
LAKE WASHINGTON
LAKE LEE
LAKE LAFLORE
LAKE WASHINGTON

GREENVILLE BRIDGE
GREENVILLE CUT OFF (1936)
MILLER BEND
TARPLEY CUT OFF
TARPLEY BEND
LAKE BEND
LAKE NECK
LAKE BEND NECK
WOOKSTOCK ISLAND
TARPLEY ISLAND
TOWN ISLAND
KENTUCKY BEND BAR
KENTUCKY

T19N R9W
T19N R8W
T18N R8W
T18N R7W
T17N R8W
T17N R7W
T16N R8W
T16N R7W
T15N R8W
T15N R7W
T14N R8W
T14N R7W

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34 35 33 32 1 2 3 4 5

LEGEND

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SCALE IN MILES

TRANSVERSE MERCATOR PROJECTION

1973

SENATE PLAN

TENNESSEE

ARKANSAS

LOUISIANA

ALABAMA

DESOTO 1
MARSHALL 2
BENTON 3
TIPPAH 4
ALCORN 5
TISHOMINGO
TUNICA 12
TATE 12
PRENTISS 5
UNION 3
PANOLA 2
LAFAYETTE
LEE 6
ITAWAMBA
COAHOMA 13
QUITMAN 12
PONTOTOC 3
11
19
YALOBUSHA
CALHOUN 10
CHICKASAW
7
MONROE
TALLAHATCHIE
BOLIVAR 14
15
18
19
GRENADA
9
CLAY
SUNFLOWER
20
LEFLORE 18
WEBSTER 10
16
MONTGOMERY
22
LOWNDES 8
CARROLL
OKTIBBEHA
WASHINGTON 17
CHOCTAW
21
22
29
HUMPHREYS 17
HOLMES
28
ATTALA 20
WINSTON
NOXUBEE
SHARKEY
YAZOO
28
LEAKE
NESHOBA
KEMPER
23
ISSAQUENA 29
MADISON
SCOTT
26
NEWTON
LAUDERDALE
24
30
31
32
34
WARREN
HINDS
RANKIN 27
33
35
25
SMITH
JASPER
CLARKE
36
SIMPSON
COVINGTON 42
43
JONES
WAYNE
46
CLAIBORNE 37
JEFFERSON 38
ADAMS 39
FRANKLIN
LINCOLN
LAWRENCE
JEFFERSON DAVIS
41
44
45

COUNTY OUTLINE MAP
OF

MISSISSIPPI

1976 COURT ORDERED REAPPORTIONMENT OF THE STATE LEGISLATURE

LEGISLATIVE AND BEAT BOUNDS BY H KIRKSEY

SCALE IN MILES
0 3 6 12 18
TRANSVERSE MERCATOR PROJECTION

HOUSE PLAN

TENNESSEE

ARKANSAS

LOUISIANA

ALABAMA

TENNESSEE RIVER

MISSISSIPPI RIVER

DESOTO 1 2

MARSHALL 3

BENTON 4

TIPPAH 5

ALCORN 6

TISHOMINGO 7

TUNICA 8

TATE 9

PRENTISS 14

UNION 13

PANOLA 10 11

LAFAYETTE 12

COAHOMA 15 16

QUITMAN 17

PONTOTOC 18

ITAWAMBA 21

YALOBUSHA 11

TALLAHATCHIE 27

CALHOUN 28

CHICKASAW 29

MONROE 30 31

BOLIVAR 24 26

GRENADA 39 40

SUNFLOWER 22

LEFLORE 36

WEBSTER 41

CLAY 42

CARROLL 38

MONTGOMERY 40

OKTIBBEHA 43 44

OWNDES 44 45 46

WASHINGTON 32 33 34

CHOCTAW 38

HUMPHREYS 48

HOLMES 49

ATTALA 50

WINSTON 51

NOXUBEE 52

SHARKEY 47

YAZOO 56

ISSAQUENA 32

MADISON 73

LEAKE 58

NESHOBA 59

KEMPER 60

GREEN 54

HINDS 71

RANKIN 74

SCOTT 76

NEWTON 77

CLAIBORNE 81

COPIAH 82

SIMPSON 84

SMITH 85

JASPER 86

CLARKE 87

JEFFERSON 89

ADAMS 88

FRANKLIN 90

LINCOLN 91

LAWRENCE 83

JEFFERSON DAVIS 92

COVINGTON 102

JONES 95

WAYNE 96

COUNTY OUTLINE MAP
OF

MISSISSIPPI

1976 COURT ORDERED REAPPORTIONMENT OF THE STATE LEGISLATURE

LEGISLATIVE AND BEAT BOUNDS BY H.KIRKSEY

SCALE IN MILES 0 6 12 18

TRANSVERSE MERCATOR PROJECTION

Legend:

Isolated Precinct *

Noncontiguous District ★

Indefinite Boundary

ARKANSAS
LOUISIANA
ALABAMA
TENNESSEE
MISSISSIPPI RIVER
MISSISSIPPI SOUND

Supreme Court, U. S.
FILED
FEB 18 1977
MICHAEL RODAK, JR., CLERK

Nos. 76-777, 76-933, 76-934 and 76-935

In the Supreme Court of the United States

OCTOBER TERM, 1976

PEGGY J. CONNOR, ET AL., APPELLANTS

v.

CLIFF FINCH, GOVERNOR OF THE STATE OF MISSISSIPPI, ET AL.

CLIFF FINCH, GOVERNOR OF THE STATE OF MISSISSIPPI, ET AL., APPELLANTS

v.

PEGGY J. CONNOR, ET AL. AND UNITED STATES OF AMERICA

UNITED STATES OF AMERICA, APPELLANT

v.

CLIFF FINCH, GOVERNOR OF THE STATE OF MISSISSIPPI, ET AL.

PEGGY J. CONNOR, ET AL., APPELLANTS

v.

CLIFF FINCH, GOVERNOR OF THE STATE OF MISSISSIPPI, ET AL.

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

REPLY BRIEF FOR THE UNITED STATES

DANIEL M. FRIEDMAN,
Acting Solicitor General,

J. STANLEY POTTINGER,
Assistant Attorney General,
Department of Justice,
Washington, D.C. 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-777
PEGGY J. CONNOR, ET AL., APPELLANTS
v.
CLIFF FINCH, GOVERNOR OF THE STATE OF MISSISSIPPI, ET AL.

No. 76-933
CLIFF FINCH, GOVERNOR OF THE STATE OF MISSISSIPPI, ET AL., APPELLANTS
v.
PEGGY J. CONNOR, ET AL AND UNITED STATES OF AMERICA

No. 76-934
UNITED STATES OF AMERICA, APPELLANT
v.
CLIFF FINCH, GOVERNOR OF THE STATE OF MISSISSIPPI, ET AL.

No. 76-935
PEGGY J. CONNOR, ET AL., APPELLANTS
v.
CLIFF FINCH, GOVERNOR OF THE STATE OF MISSISSIPPI, ET AL.

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

REPLY BRIEF FOR THE UNITED STATES

ARGUMENT

I. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION BY FORMULATING A REAPPORTIONMENT PLAN COMPOSED OF SINGLE MEMBER DISTRICTS

The appellant state parties (No. 76-933) contend that the district court abused its discretion in failing to carve out an exception to this Court's decisions favoring single member districts in court-ordered plans. They argue that the long-standing state policy of preserving the integrity of county boundaries constituted "particularly pressing features calling for multi-member districts" within the meaning of *Chapman* v. *Meier*, 420 U.S. 1, 19, and that the absence of findings by the district court that multi-member districts dilute or cancel black voting strength rendered unjustifiable the district court's departures from the state's policy. On the record in this case, these arguments are without merit.

In *Connor* v. *Waller*, 421 U.S. 656, 657, this Court reversed the district court's judgment approving the 1975 state enactments reapportioning the Mississippi legislature. This ruling, however, was without prejudice to the district court's authority "to entertain a proceeding to require the conduct of the 1975 elections pursuant to a court-ordered reapportionment plan that complies with this Court's decisions in *Mahan* v. *Howell*, 410 U.S. 315 (1973); *Connor* v. *Williams*, 404 U.S. 549 (1972); and *Chapman* v. *Meier*, 420 U.S. 1 (1975)."

In *Chapman* v. *Meier*, *supra*, the Court had held, in a reapportionment case not involving claims of racial or political discrimination, that "[t]he standards for evaluating the use of multimember districts * * * clearly differ depending on whether a federal court or a state legislature has initiated the use." 420 U.S. at 18. Citing its earlier holding in the instant litigation emphasizing a preference for single-member districts in court-ordered plans (*Connor* v. *Johnson*, 402 U.S. 690, 692, as reaffirmed in *Connor* v. *Williams*, *supra*, 404 U.S. at 551), the Court in *Chapman* unanimously held that "[a]bsent particularly pressing features calling for multi-member districts, a United States district court should refrain from imposing them upon a State." 420 U.S. at 19.

While the Court stated in *Chapman* that "there is special reason to follow the *Connor* rule favoring * * * [single-member] districting" where the State "always has employed single-member districts" (420 U.S. at 19), the fact that the Court specifically relied on its earlier decision in the present case (*Connor* v. *Johnson*, *supra*)—and designated the basic rule "the *Connor* rule"—shows that the basic rule applies in the present context and is, indeed, the law of this case established by this Court in an earlier stage of this litigation (as the district court has now, belatedly, recognized). Although the district court's 1975 temporary plan adopted after the remand in *Connor* v. *Waller*, *supra*, included multi-member districts, its final plan redistricts the Mississippi House and Senate into single-member districts. The district court made no findings of a "singular combination of unique factors" (*Mahan* v. *Howell*, *supra*, 410 U.S. at 333)[1] or of "a legitimate state interest supporting the abandonment of the general preference for single-member

---

[1] In *Mahan* v. *Howell*, *supra*, this Court held that a district court had not abused its discretion in temporarily establishing a multimember senatorial district for the Virginia Senate. The Court found that the district court was faced with a number of unusual circumstances (410 U.S. at 330-333): first, the state-enacted single-member plan unconstitutionally discriminated against military personnel in the area affected. Second, the state enactment contained significant population disparities among the single-member districts established. Third, precise survey data which would have permitted the district court to create single-member districts reflecting actual population distribution were lacking. Finally, the filing deadline for the next legislative elections was fast approaching.

districts in court-ordered plans which we recognized in *Connor* v. *Johnson.*" *Chapman* v. *Meier, supra,* 420 U.S. at 20.

Multi-member districts in legislative plans, even when not shown to minimize or cancel out voting strength of racial or political elements of the voting population (*Fortson* v. *Dorsey,* 379 U.S. 433, 439),[2] are subject to "practical inherent weaknesses" (*Chapman* v. *Meier, supra,* 420 U.S. at 15-16). Nevertheless, in state-initiated plans multi-member districting is unconstitutional only where it is shown that a racial or political group has been denied access to the political process equal to that of other groups, through the lessening or cancellation of its voting strength. *Chapman* v. *Meier, supra,* 420 U.S. at 17. In court-ordered plans, however, single-member districts are emphatically preferred even in the absence of racial or political discrimination. *Chapman* v. *Meier, supra.* As previously noted, this preference can be overcome only by compelling state interests or extraordinary circumstances of the kind present in *Mahan* v. *Howell, supra,* and no such findings were made in this case.

In any event, where, as in the present case, the record shows a long and appalling history of deliberate exclusion of blacks from the political process, and the intentional use of reapportionment to achieve that end (U.S. Brief App. A 13a-28a), and this discrimination is aggravated by multi-member districting, such districting has no place in a court-ordered plan whatever the state policy may be. This Court has so indicated in this very litigation. *Connor*

[2]Absent proof of such defects, the Court has upheld legislative plans utilizing multi-member districting. See, *e.g., Kilgarlin* v. *Hill,* 386 U.S. 120; *Burns* v. *Richardson,* 384 U.S. 73; *Fortson* v. *Dorsey, supra.* See *Reynolds* v. *Sims,* 377 U.S. 533, 577. Where dilution of minority voting strength has been proved however, the Court has held multi-member districts to be invalid. *White* v. *Regester,* 412 U.S. 755.

v. *Johnson, supra,* reaffirmed in *Connor* v. *Williams,* 404 U.S. at 551. Accord, *East Carroll Parish School Board* v. *Marshall,* 424 U.S. 636; *Wallace* v. *House,* 425 U.S. 947.[3] Thus, in this case, the state's policy favoring the use of multi-member districts could not be given weight and the district court correctly adhered to "the general preference for single member districts in court ordered plans." *Chapman* v. *Meier, supra,* 420 U.S. at 20; *Connor* v. *Johnson, supra*; *Connor* v. *Williams, supra.*

We do not contend, however, that even in the circumstances reflected here, a long standing state policy favoring the integrity of political subdivisions should be totally disregarded.[4] On the contrary, it should be accommodated

[3]In *Wallace* v. *House, supra,* this Court vacated, for consideration in light of *East Carroll Parish School Board* v. *Marshall, supra,* a court of appeals decision requiring the district court to adopt the reapportionment plan proposed by a city under which one of five city aldermen would have been elected at-large. 515 F. 2d 619 (C.A. 5). Aldermen had historically been elected at-large. 515 F. 2d at 632. The plaintiffs claimed that the plan diluted black voting strength. On remand, the court of appeals concluded that the district court had not abused its discretion in adopting an all single-member districting scheme. *Wallace* v. *House,* 538 F. 2d 1138 (C.A. 5).

[4]The state appellants err in contending that "[t]he intervenor [the United States Attorney General] believes multi-member districts are per se unconstitutional" (Brief 42-43 n. 33). That has never been the position of the United States, nor does the portion of the record cited support that contention. Government counsel (State Parties Supp. App. 100a) stated:

> Mr. Johnson:
>
> I believe that goes directly to the issue in this case concerning the effect of a multi-member district in a Black area compared to the effect of a single-member district. The position of the United States has been, and still [37] is, that multi-member districts dilute the Black vote.
>
> Judge Coleman:

to the extent consistent with the district court's duty to remedy the effects of past discrimination in voting and to avoid unnecessary dilution of minority voting strength, while complying with the one-person, one-vote requirement.

In this case, the district court has not ignored the state policy of adhering to county lines (III A. 96-99). It has accommodated that policy to the extent consistent with its duty to avoid the use of multi-member districts (III A. 99). Thus, in reapportioning the legislature, it was guided by the following principles (III A. 100-101):

> 1. If a county has more than enough population for the election of a Representative or Senator, then there shall be one complete district within that county, thus at least one Senator or Representative will be chosen solely by that county. In practical effect this will largely preserve the integrity of county boundaries and conform, to a degree, with the state policy on that subject, *Mahan* v. *Howell, supra.*
>
> 2. Except where two or more districts may properly be set up *within* the same county as authorized by Mississippi Constitution, Section 254, no county will be split into more than two segments.

The state parties also argue (Br. 33-34) that county lines must be preserved intact because when counties are

---

Has any court ever held that as a per se proposition?

Mr. Johnson:

Not as a per se proposition. Our position is based on the evidence presented to this Court last May and on the basis of that record and on the basis of the information the Department of Justice has filed with this Court evaluating the effect of multi-member districts in certain areas, and stating our specific reasons for objecting to the state's plan.

fractured, voters in the fraction of a county that is combined with a whole county to form a district suffer dilution of their vote because they can be outvoted by the voters from the county which is not divided. At the same time they acknowledge (Br. 35) that in a plan that does not fracture county boundaries, compliance with one-person, one-vote requirements necessitates use of multi-member districts in which counties are combined. The effect of such combinations on smaller counties that are joined to larger counties would thus seem to be the same as the effect of combining a whole county with a part of another county. Cf. *Mahan* v. *Howell, supra,* 410 U.S. at 323-324. Thus the fracturing of counties to achieve single-member districts is not substantially different in this respect than a multi-member plan.[5] But a single-member districting has other remedial advantages, including the elimination of past dilution of black voting strength, which warrant its use in this case.[6]

---

[5]The state proposed no multi-member plan for adoption by the district court other than the 1975 legislative plan it was barred from implementing by Section 5 of the Voting Rights Act, (see U.S. Br. 14-16) and readoption of the court's 1975 temporary plan (State Parties Supp. App. 93a-94a).

[6]In their brief (p. 14 n. 13) the state appellants also note that the Attorney General's objection to the 1975 legislative plan under Section 5 of the Voting Rights Act, 42 U.S.C. 1973c, was interposed the day after its submission to the Attorney General. They overlook the fact that the United States participated as *amicus curiae* in the appeal from the district court's approval of that plan, *Connor* v. *Waller,* 421 U.S. 656, and, as a result, had already completed an extensive analysis of that plan (see Brief for the United States in No. A-968, October Term, 1974, Appendix B). As stated in the Attorney General's letter, the objection was based, in part, upon that analysis (see Br. for private appellants Connor, *et al.*, 15 n. 21).

II. SPECIAL ELECTIONS ARE REQUIRED TO REMEDY, WITHOUT FURTHER DELAY, DILUTION EXISTING UNDER PRIOR PLANS

We have shown in our main brief (pp.59-66) that the 1975 temporary plan (and prior apportionment plans) operated to dilute black voting strength in Mississippi by barring black participation in "the political process in a reliable and meaningful manner." *White* v. *Regester*, 412 U.S. 755, 767. As a part of the court's equitable remedy, special elections are required to end without further delay the effects of the state's policy of electoral discrimination against blacks.

The district court ordered special elections in two House districts—Nos. 79 and 97 (III A. 227, 228)—on the basis that such elections were "required to remedy any impermissible dilution of black voting strength in the temporary plan when compared with the permanent plan established for the 1979 elections" (III A. 224). Although we have argued that the district court misapplied this standard and that special elections are required in 13 additional districts (Br. 92-103), we agree with the court that prior "impermissible dilution" provides the basis for ordering special elections.

There is no substance to the state parties' contention that the standard enunciated by the district court is erroneous because it is "the standard of dilution applicable to cases cognizable under Section 5 of the Voting Rights Act of 1965 * * *" (Br. 50) and because the court did not explicitly find "any unconstitutional racial dilution" (*id.* at 48). Immediately following its formulation of the above standard, the district court cites as support three cases decided by the Court of Appeals for the Fifth Circuit[7] and

[7] *McGill* v. *Gadsden County Commission*, 535 F. 2d 277; *Paige* v. *Gray*, 538 F. 2d 1108; *Zimmer* v. *McKeithen*, 485 F. 2d 1297, affirmed on other grounds *sub nom. East Carroll Parish School Board* v. *Marshall*, 424 U.S. 636.

one case decided by the Court of Appeals for the Eighth Circuit[8] (III A. 224-225), none of which is based on Section 5. Nothing in the district court's opinion indicates that it was formulating its remedy to meet the requirements of Section 5. Rather, that remedy reflects the equitable principle that in districts in which discriminatory dilution existing under prior plans is being remedied in the court's final plan, special elections should be ordered where, as here, they will materially hasten implementation of a proper remedy for discriminatory denial of voting rights.[9]

CONCLUSION

For the reasons stated in the United States' main brief and this reply brief the judgment of the district court should be affirmed in part, reversed in part, and vacated in part. The cause should be remanded to the district court for implementation of the districting plans specified in our main brief for Hinds, Jefferson and Claiborne Counties in the Senate, and Warren, Forrest, Washington and Issaquena Counties in the House, or of other districting for those counties that does not dilute black voting strength. The district court should also be instructed to order special elections, to occur this year, in the new districts drawn in those counties to avoid dilution, in House Districts 3, 8, 16, 22, 24, 25, 47, 52, 79, 81, 89 and 97 and in Senate Districts 15, 16 and 28,

[8] *Dove* v. *Moore*, 539 F. 2d 1152.

[9] The United States agrees with the contention of the private appellants (Connor Br. 70-75) that Section 402 of the 1975 Amendments to the Voting Rights Act of 1965, 89 Stat. 404, 42 U.S.C. (Supp. V) 1973l(e), and the recently enacted Civil Rights Attorney's Fees Award's Act of 1976, Pub. L. 94-559, 90 Stat. 2641, warrant the award of reasonable attorneys' fees to counsel for the private plaintiffs in this case. In light of those statutes, there is no reason for this Court to consider the good faith *vel non* of the state. Cf. *Newman* v. *Piggie Park Enterprises, Inc.*, 390 U.S. 400.

as well as in such additional districts as are required because of their relationship to the foregoing districts.

Respectfully submitted.

DANIEL M. FRIEDMAN,
Acting Solicitor General.

J. STANLEY POTTINGER,
Assistant Attorney General.

FEBRUARY 1977.